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STATE OF NORTH CAROLINA

IN THE OFFICE OF ADMINISTRATIVE HEARINGS 18 EDC 06837

COUNTY OF FORSYTH

by and through her parents and Petitioner,	
v.	FINAL DECISION
Winston-Salem /Forsyth County Schools Board of Education Respondent.	

THIS MATTER was heard before the presiding undersigned Administrative Law Judge Stacey B. Bawtinhimer on the following dates: March 27–29 and April 1–4, 2019, at the Office of Administrative Hearings in Raleigh, North Carolina.

After considering a hearing on the merits held on the above-mentioned dates, arguments from counsel for both Parties, all documents in support of or in opposition to the Parties' motions, all documents in the record including the Proposed Decisions, supplemental documentation, as well as all stipulations, admissions, and exhibits, the Undersigned concludes that the Winston-Salem/Forsyth County Schools Board of Education ("Respondent," "School Board," or "WS/FCS")) violated the Individuals With Disabilities Education Act ("IDEA") and its implementing regulations, significantly impeded the Petitioners' ("Petitioner(s)", or "Parent(s)") rights to participate in the decisionmaking process regarding the provision of a free appropriate public education to Petitioner and denied as a free appropriate public education in the least restrictive environment.

APPEARANCES

For Petitioners: Stacey M. Gahagan

Corey Frost

Gahagan Paradis, P.L.L.C.

3326 Durham Chapel Hill Boulevard, Suite 210-C

Durham, North Carolina 27707

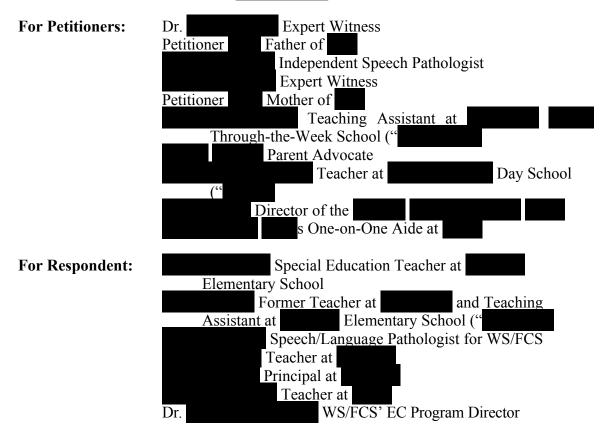
For Respondent: Maura O'Keefe

David Noland

Tharrington Smith, L.L.P.

150 Fayetteville Street, Suite 1800 Raleigh, North Carolina 27602

WITNESSES



EXHIBITS

ADMITTED EXHIBITS:

The following exhibits were received into evidence during the course of the hearing. The page numbers referenced are the "Bates stamped" numbers. The admitted exhibits have been retained as part of the official record of this contested case and given the appropriate weight in this Final Decision.

Stipulated Exhibits ("Stip. Ex."): 1-51, 53-59.1

Petitioners' Exhibits ("Pet. Ex."): 2-5, 6 (historical purposes), 7-9, 11, 13, 15, 17-18, 20, 22-25, 26 (illustrative purposes), 27 (illustrative purposes), 30, 32-34, 37, 40-42, 45-50, 52-53, 55-60, 62, 64, 72, 77-78, 80.

Stipulated Exhibit 52 was originally admitted into the record but later stricken from the record because some of the information contained in the exhibit was inaccurate. Stipulated Exhibit 59, the 2018-2019 Elementary School calendar, was filed through Supplemental Documentation on August 13, 2019.

Respondent's Exhibits ("Resp. Ex."): 3 (pp. 44-45, 51-54, 120-21), 4 (pp. 707-09), 5 (pp. 752-54, 763-65, 786-87), 10, 14, 18-24 (official notice), 25 (1296-97), 27, 28.

EXHIBITS NOT ADMITTED:

Petitioners' Supplemental Exhibits 82-86, 87, and 88 were not admitted into evidence.

Respondent's Exhibits A-D filed on August 13, 2018, in Response to Petitioners' Submission of Supplemental Information were not filed as exhibits to the hearing nor admitted as such. *See* Order Denying Petitioners' Motion to Strike (filed 08/15/2018).

OTHER DOCUMENTS:

Transcript volumes 1 through 7 were received and have been retained in the official record of this case.

Any documents produced by the Parties in discovery, including, but not limited to, IEPs, email correspondence, datasheets, and meeting notes are self-authenticated. Stip. 74.

All pleadings filed with the Office of Administrative Hearings on the matter associated with Docket No. 18 EDC 06837 are self-authenticated. Stip. 75.

All informal discovery responses served on either Party are self-authenticated. Stip. 75.

The North Carolina Department of Instruction's *Policies Governing Services for Children with Disabilities* is self-authenticated. Stip. 76.

ISSUES

The Undersigned identified the issues for hearing as follows:

- 1. Whether Respondent failed to comply with the procedural and/or substantive requirements of the IDEA at any time between November 9, 2017 through November 9, 2018, and if so, what appropriate relief should this Tribunal award Petitioners?
- 2. Whether Respondent significantly impeded so Parents' meaningful participation in the IEP process by predetermining so placement in the separate setting causing educational harm, and if so, what appropriate relief should this Tribunal award Petitioners?

BURDEN OF PROOF

Petitioners acknowledged in the Prehearing Order entered on March 19, 2018, that they have the burden of proof in this contested case. Stip. 7. The standard of proof is by a preponderance of the evidence. See Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 62 (2005); N.C. Gen. Stat. § 150B-34(a). North Carolina provides that actions of local boards of education are presumed to be correct and "the burden of proof shall be on the complaining party to show the contrary." N.C.

Gen. Stat. § 115C-44(b). The Petitioners, being the complaining party, have the burden of proof to show by a preponderance of evidence that Respondent did not provide with a free appropriate public education ("FAPE") and denied her Parents meaningful participation in the IEP process by predetermining splacement in the separate setting, thus causing educational harm.

PROCEDURAL BACKGROUND

- On November 9, 2018, Petitioners and filed a Petition for a Contested Case Hearing in the Office of Administrative Hearings against WS/FCS. In the Petition, Petitioners alleged WS/FCS failed to:
 - a) Offer a FAPE in the least restrictive environment;
 - b) Develop and implement substantively and procedurally valid Individualized Education Programs ("IEPs") for
 - c) Employ adequate identification, classification, and placement procedures with respect
 - d) Properly address
 e) Properly evaluate
 s documented disabilities and academic issues;
 e) Properly evaluate
 g and employ proper evaluative procedures;

 - f) Provide a substantively appropriate school placement to

 - g) Properly consider
 s need for related services;
 h) Properly consider
 s need for Extended School Year ("ESY") services;
 - i) Comply with the procedural requirements of the IDEA, which resulted in educational harm, denial of parental participation, or the loss of educational benefit to
 - j) Follow the requirements set forth in the IDEA; and,
 - k) Follow the requirements of the North Carolina State law as set forth in N.C. Gen. Stat. §§ 115C-109.6 et seq.
- 2. As remedy, Petitioners asked for placement in an appropriate private school, compensatory special education and related services, evaluations, reimbursement for any expenses incurred as a result of Respondent's failure to provide FAPE including, but not limited to, the costs to attend any private therapies, and the tuition and all associated and expenses incurred for costs and expenses, including transportation and adult assistance incurred for to attend the private school.
- On November 21, 2018, the Undersigned issued an Order Setting Hearing and General Pre-Hearing Order scheduling the Due Process Hearing to start on January 2, 2019.
 - 4. Respondent filed its Response to the Petition on December 5, 2018.
- On December 3, 2018, this Tribunal issued an Order of Reassignment, reassigning the case to Administrative Law Judge Randall May. The case was subsequently reassigned to the Undersigned on February 1, 2019.
- On December 12, 2018, Respondent filed a Motion to Continue Hearing. This Tribunal granted the Motion to Continue on December 19, 2018. On January 11, 2019, the Parties filed a Joint Motion for a Definite Scheduling Order. The Parties proposed the hearing take place

from March 27, 2019, through April 5, 2019. This Tribunal issued the Consent Scheduling Order on February 1, 2019.

- 7. On January 15, 2019, the Parties filed a Joint Motion for Consent Protective Order. On January 18, 2019, this Tribunal issued the Protective Order for the production of certain confidential information, including medical records. Additional Protective Orders were issued on February 8, 2019, for the production of confidential personnel records, and on March 13, 2019 to govern access by Petitioners' expert witnesses to confidential and sensitive student information during classroom observations.
- 8. On February 8, 2019, Petitioners filed a Motion to Compel Discovery, requesting this Tribunal compel Respondent to allow Petitioners' expert witness to conduct observations at Elementary School (" and the Readiness Program at Elementary School (" in the WS/FCS. Respondent filed its Response to Petitioners' Motion to Compel on February 14, 2019.
- 9. On February 15, 2019, Petitioners filed a Motion to Quash Subpoenas and Motion for Protective Order, requesting this Tribunal enter a Protective Order barring Respondent from conducting any further formal discovery related to Petitioners' Motion to Quash on February 21, 2019.
 - 10. On February 20, 2019, Petitioners filed a Motion to Sequester Witnesses.
- 11. On March 1, 2019, this Tribunal entered an Order Granting in Part Petitioners' Motion to Compel, ordering Respondent allow Petitioners' expert to observe the classroom settings but not to speak with school staff with the exception of perfunctory administrative tasks.
- 12. On March 1, 2019, this Tribunal entered an Order Denying Petitioners' Motion to Quash Subpoenas.
- 13. On March 1, 2019, Petitioners filed a Motion for Summary Judgment. Respondent filed its Response on March 11, 2019. Petitioners' Motion for Summary Judgment was denied on March 26, 2019.
- 14. On March 5, 2019, Respondent filed a Motion to Compel Release of Records, requesting this Tribunal enter an order directing to produce all records requested by Respondent in its second subpoena.
- 15. On March 8, 2019, Respondent filed a Motion for Mediated Settlement Conference. On the same day, this Tribunal denied Respondent's Motion as mediated settlement conferences do not apply to IDEA impartial due process hearings. Petitioners filed a Response to Respondent's Motion on March 11, 2019.
- 16. On March 13, 2019, Respondent filed a Motion to Transfer Venue, requesting the portion of the hearing constituting its case-in-chief be held in Forsyth County, rather than Wake County. On March 27, 2019, this Tribunal entered an Order Denying Respondent's Motion to

Change Venue as untimely but accommodations for off-site testimony were made for the Parties' witnesses.

- 17. On March 20, 2019, Respondent filed a Motion *in Limine*, requesting an order precluding expert testimony from Petitioners' expert witnesses regarding the appropriateness of s private placement.
- 18. On March 26, 2019, Respondent filed a Second Motion *in Limine*, requesting an order precluding testimony from Petitioners' expert witness Dr. regarding her classroom observations in the WS/FCS, as Dr. unaware of the Order, inadvertently spoke with school staff beyond perfunctory administrative tasks. On April 1, 2019, this Tribunal determined that Dr. conversations with school staff were in the presence of Dr. and otherwise did not prejudice Respondent; therefore, the Undersigned issued an Order granting in part and denying in part Respondent's Motion *in Limine*. The Undersigned did not consider in the Findings of Fact any verbal communications between Dr. and school staff.
- 19. On March 26, 2019, Respondent filed a Motion to Seal, requesting this Tribunal seal public access to certain exhibits received from Seal on the same day.
- 20. On March 27, 2019, this Tribunal orally granted Petitioners' Motion to Sequester Witnesses.
- 21. At the close of Petitioners' case in chief on Tuesday, April 2, 2019, Respondent moved to dismiss pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure. This Tribunal denied Respondent's Motion in its entirety.
- 22. On July 19, 2019, the case was reopened after the Undersigned advised the Parties that she was ruling in favor of Petitioners and needed additional information from Petitioners regarding speech/language and transportation reimbursement amounts, Extended School Year ("ESY") entitlement under a Private Services Plan ("PSP") and asked that the Petitioners cite relevant exhibits in support of all reimbursement amounts.
- 23. Petitioners filed Supplemental Documentation, Supplemental Petitioners' Exhibits 82-86, and a Brief in Support of ESY on July 26, 2019. Petitioners Supplemental Exhibits 82-86 were not originally marked exhibits, and not discussed or admitted during Petitioners' case in chief.
- A Second Order for Additional Supplemental Document from the Parties was filed on July 30, 2019 seeking from the Petitioners reconciliation of Petitioners' reimbursement amounts in Petitioners Exhibits 34 and 36, and a second flash drive with video exhibits (to be filed with Clerk). In addition, Petitioners were asked to cite to information within the record as to when:

 1. Petitioners were made aware that see regular and special education teachers were tracking her behaviors; 2. Respondent disclosed the existence of the Behavior Tracking Sheets (Stip. Ex. 38); and 3. Respondent showed or gave copies of the Behavior Tracking Sheets to the Parents or their legal counsel.

- 25. In the Second Order Respondent was given until August 9, 2019, to respond (later extended to August 16, 2019) to respond to Petitioners' supplemental document and arguments. Respondent was also asked to provide the names of the "Parent" and "Preschool Teacher" who completed the Vineland Adaptive Behavior Rating Scales in the Psychological Evaluation. Respondent was asked the same three questions as Petitioners about the Behavior Tracking Sheets. Respondent was also asked to submit alternative remedies, including compensatory education, for the Undersigned's consideration.
 - 26. The Final Decision deadline was extended accordingly to August 23, 2019.
- 27. Although Petitioners' Exhibits 49, 50, 52, 53, and 55 (videos) had been admitted during Petitioners' case in chief, Petitioners did not provide two flash drives containing those exhibits to the Clerk's office. Petitioners filed an additional flash drive with these video exhibits on August 1, 2019.
- 28. Upon a Second Order for Additional Supplementation from the Parties, Petitioners filed Amended Supplemental Documentation and Supplemental Petitioners Exhibits 87 and 88 on August 2, 2019. Petitioners Supplemental Exhibits 87 and 88 were not originally marked exhibits, and not discussed or admitted during Petitioners' case in chief.
- 29. After receipt of Petitioners' Supplemental Documentation, Respondent requested and was granted an extension to respond to August 15, 2019. Respondent filed its Response on August 13, 2019 with Exhibits A, B, C, and D attached. Respondent's Supplemental Exhibits A, B, C, and D were not originally marked exhibits, and not discussed or admitted during Respondent's case in chief.
- 30. Because it had been inadvertently left out of the record, the Parties had agreed during the July 30, 2019 phone conference to stipulate to and file the 2018-2019 Elementary School calendar as Stipulated Exhibit 59. Stipulated Exhibit 59 was filed on August 13, 2019.
- 31. On August 15, 2019, Petitioners moved to strike Respondent's Exhibits A, B, C, and D from the records as those exhibits had not been marked exhibits, discussed, or admitted during Respondent's case in chief. The Undersigned denied Petitioners' motion because these exhibits were submitted for demonstrative purposes according to Respondent's legal counsel and were not offered as evidence.
- 32. In fairness to both Parties, any supplemental or responsive exhibits filed in support or defense of the Undersigned's Orders dated July 19 or July 30, 2019, which were not originally marked, discussed, and admitted exhibits, will not be received into evidence for determination of this Final Decision.

- 33. Petitioners sought leave to Reply to Respondent's submissions and leave was granted for Petitioners to reply by 12:00 noon on August 21, 2019. Petitioners timely filed their Reply in which they denied that Respondent was prejudiced by the Petitioners' supplemental exhibits.
- 34. Stipulated Exhibit 59 was admitted into evidence on August 23, 2019, then the record was closed.

FINDINGS OF FACT

Stipulations of Fact

At the start of the hearing in this matter, the Parties agreed to Jurisdictional, Party, Legal, and Factual Stipulations in a proposed Pre-Trial Order, which was approved and filed in the Office of Administrative Hearings on March 27, 2019. Stipulations are referenced as "Stip. 1," "Stip. 2," Stip. 3," etc. To the extent that the Stipulations are not specifically stated herein, the Stipulations of Fact in the Order on the Pre-Trial Conference are incorporated fully herein by reference.

Two additional post-hearing stipulations were filed on June 11, 2019 and are referenced as "Post-Hearing Stips. 1 and 2." The Parties also identified corrections to the hearing transcripts and listed the corrections in the Post-Hearing Stipulations. These corrections and Post-Hearing Stipulations are incorporated herein by reference.

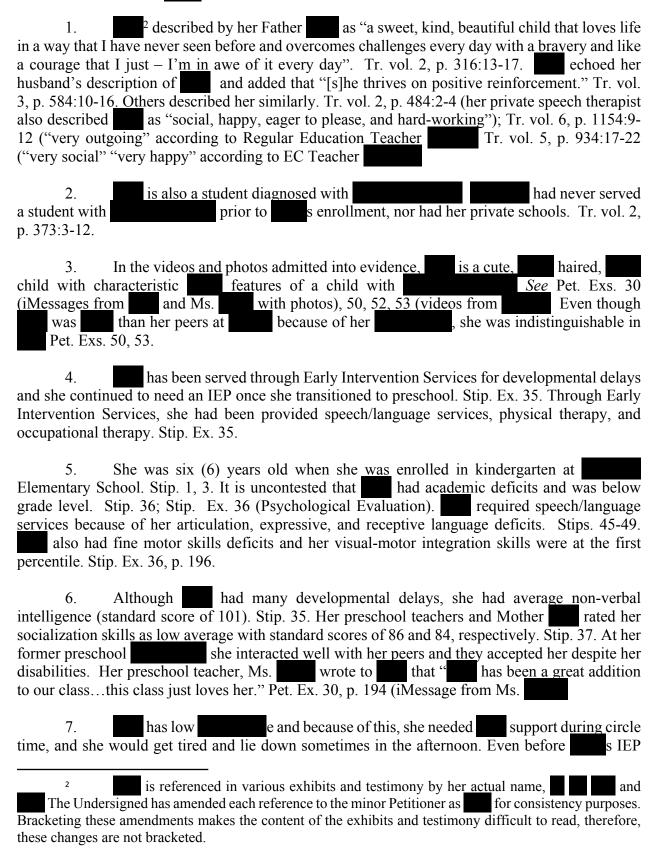
Prior Orders

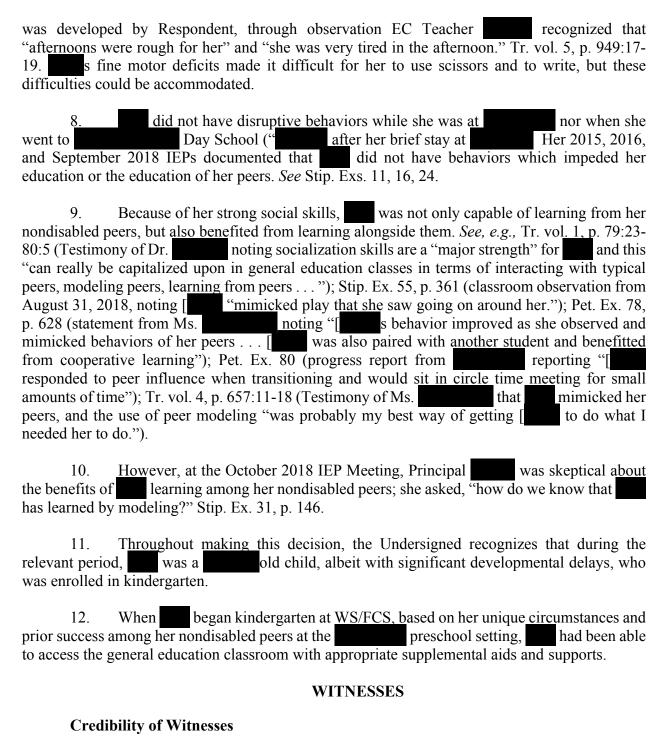
Unless specifically contradicted herein, this Final Decision incorporates and reaffirms all Findings of Fact and Conclusions of Law contained in previous Orders entered in this contested case.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making these Findings of Fact, the Undersigned has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, biases, or prejudices the witnesses may have, the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case including, but not limited to, verbal statements at IEP meetings, IEP meeting minutes, IEP documents, and all other competent and admissible evidence.

Based upon the stipulations of record, party admissions, and the preponderance of the admissible evidence, the Undersigned finds as follows:

s Unique Circumstances and Special Needs





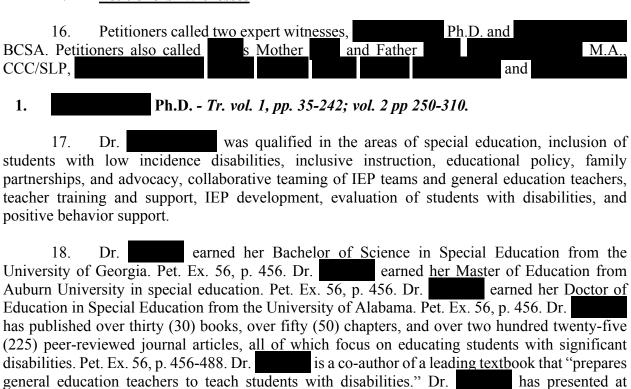
13. The Undersigned determined the credibility of the witnesses³ in this case based on any inconsistencies in the record and the witnesses' testimony as well as the Undersigned's observations of each witness' demeanor, voice inflection, tone, hesitation in responding to questions, facial features, body language, as well as any leading nature in the question and the

³ See also description of credibility basis in statement starting as the "Based Upon" paragraph on page 8.

witnesses' interactions with legal counsel. The transcript of the hearing cannot record these mannerisms of witnesses.

- 14. In this case, as in all others, the Undersigned has not indicated in the record to legal counsel how she intended to rule on the credibility of the witnesses. Occasionally in hearings the Undersigned has noted on the record when a witness significantly and routinely delays answering a question. There is no legal authority requiring that an administrative law judge, or any judge, make any credibility determinations on the record or advise legal counsel on how the administrative law judge intends to rule on the credibility of witnesses.
- 15. Even though this Final Decision may incorporate language from the Parties' respective Proposed Final Decisions, credibility determinations are made independently from any proposals by the Parties. The Undersigned notes that legal counsel of both Parties also heard and/or observed each witness testify.

A. <u>Petitioners' Witnesses</u>



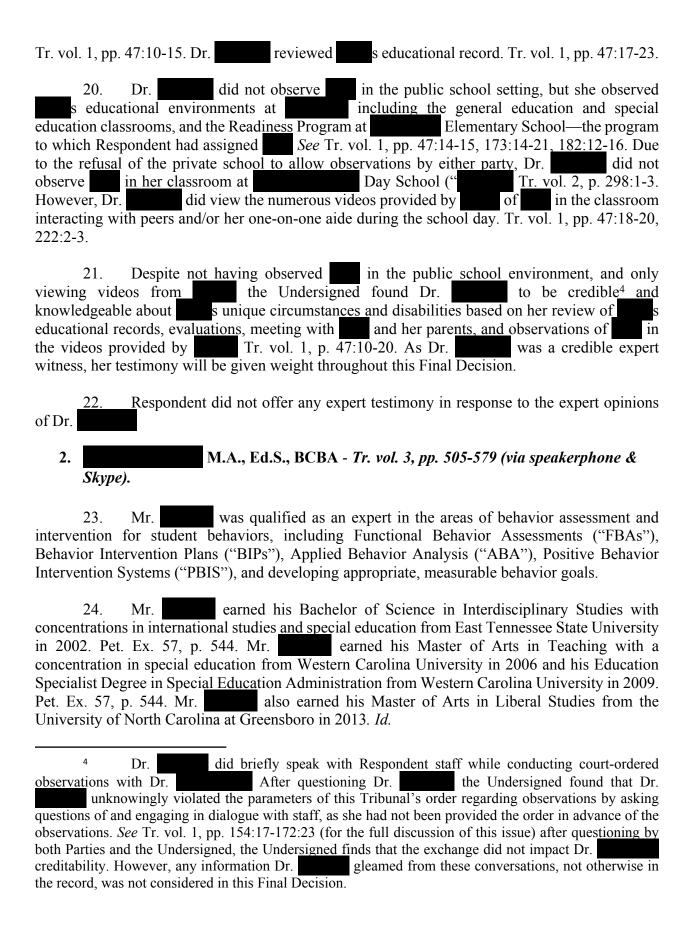
19. Dr. education and background qualified her to offer her expert opinion about the areas in which she was qualified as an expert by the Tribunal. Pet. Ex. 56. Dr. had direct contact with and her family as part of gathering information to form the basis of her opinions about seducational programming and her preparation to testify on seducational programming.

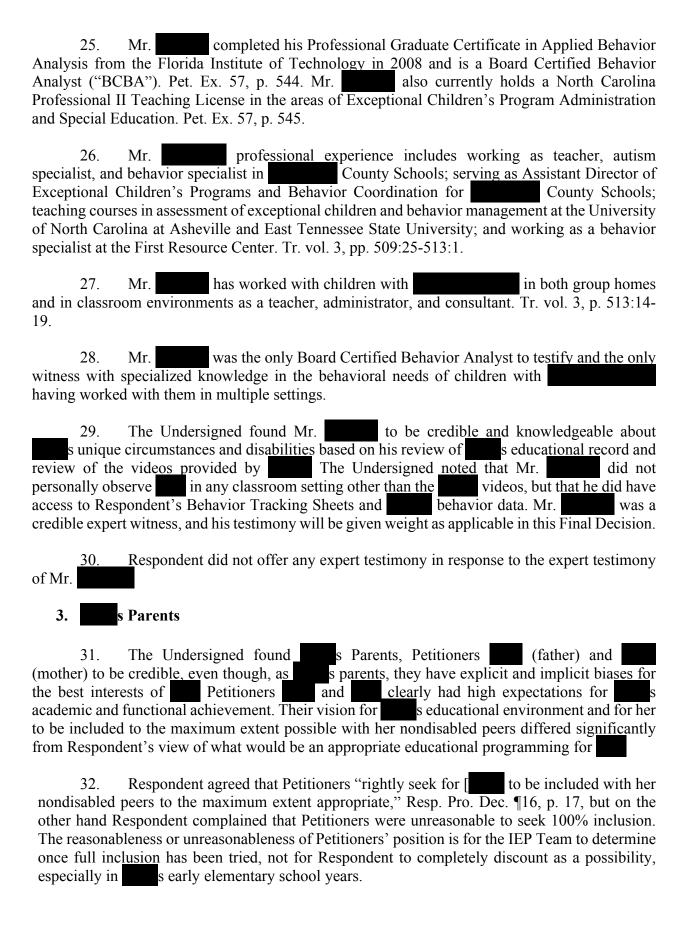
hundreds of conferences and workshops on developmental disabilities and the core principles of

awards over the course of her career, including the Lifetime Achievement Award from the American Association on Intellectual and Developmental Disabilities. Pet. Ex. 56, p. 456-57.

has received multiple

the IDEA. Pet. Ex. 56, p. 489-542; see also Tr. vol. 1, p. 41:1-2. Dr.





a. ("s Father")- Tr. vol. 2, pp. 316-416.

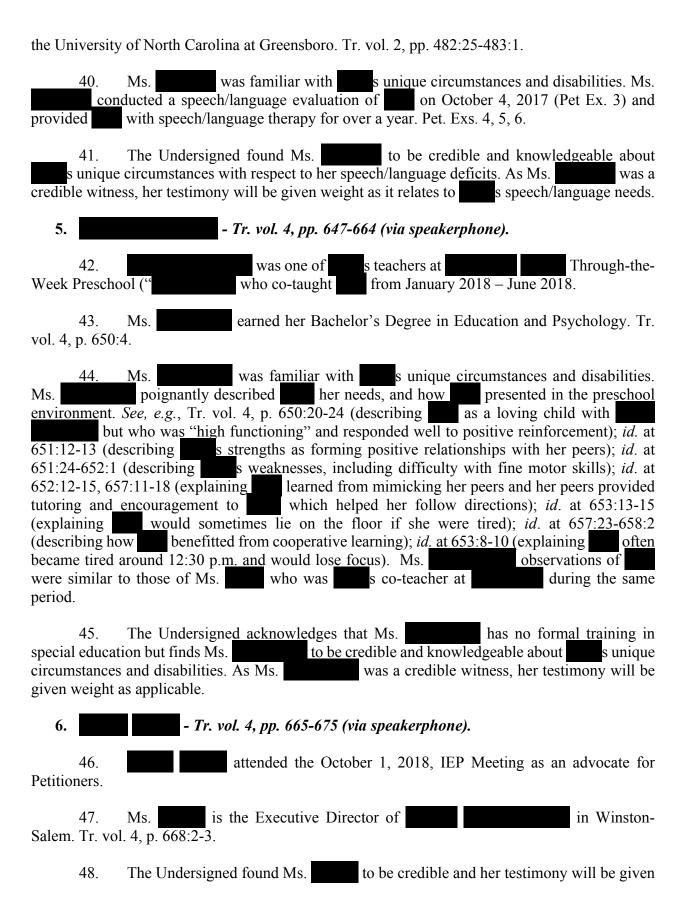
- 33. Petitioner testified about his experience with WS/FCS during the relevant time period, his vision for was for her to be included in the regular classroom with her nondisabled peers.
- 34. The Undersigned found s testimony to be corroborated by the testimonies of Respondent's witnesses. *Compare*, e.g., Tr. vol. 2, p. 401:24-25 (Testimony of from leaving the October 1, 2018 IEP meeting), with Tr. vol. 6, p. 1329:12stopped him and 17 (Testimony of Principal that she did not try to stop and meeting); Tr. vol. 2, p. 370: 10-14 (Testimony of that the school did not ask his permission to remove from her regular education class for thirty (30) minutes every day beginning on s third day of school), with Tr. vol. 5, p. 1016:21-23 (Testimony of Ms. not get permission from sparents prior to removing her from her regular education class); Tr. vol. 2, p. 393:11-16 (Testimony of that the school-based members of the IEP team did not respond after he expressed his vision that be educated alongside her nondisabled peers), with Tr. vol. 6, p. 1299:3-7 (Testimony of Principal that she did not respond when opened the meeting by expressing his vision for

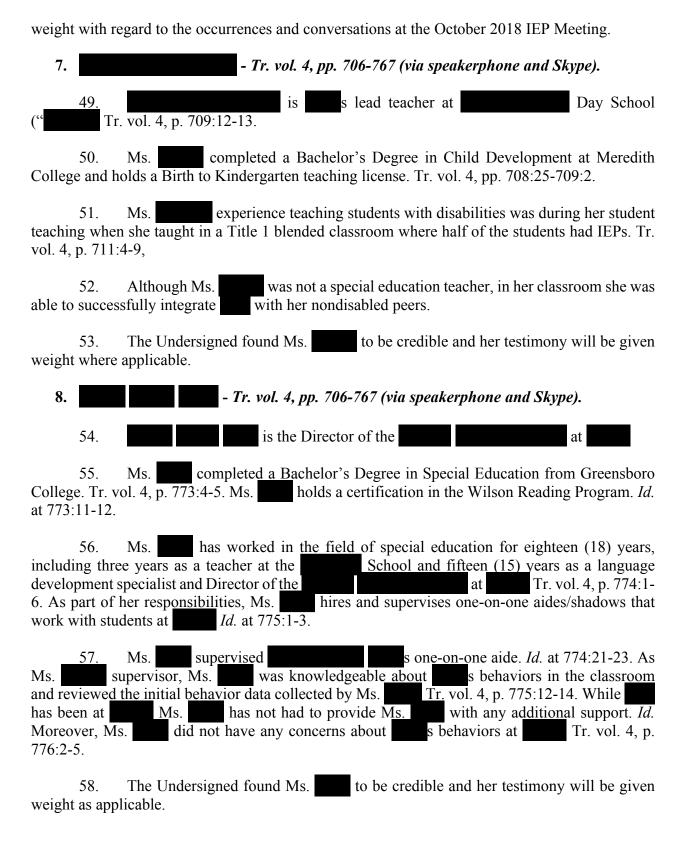
b. (" s Mother") - Tr. vol. 3, pp. 583-636; vol. 4, pp. 685-690.

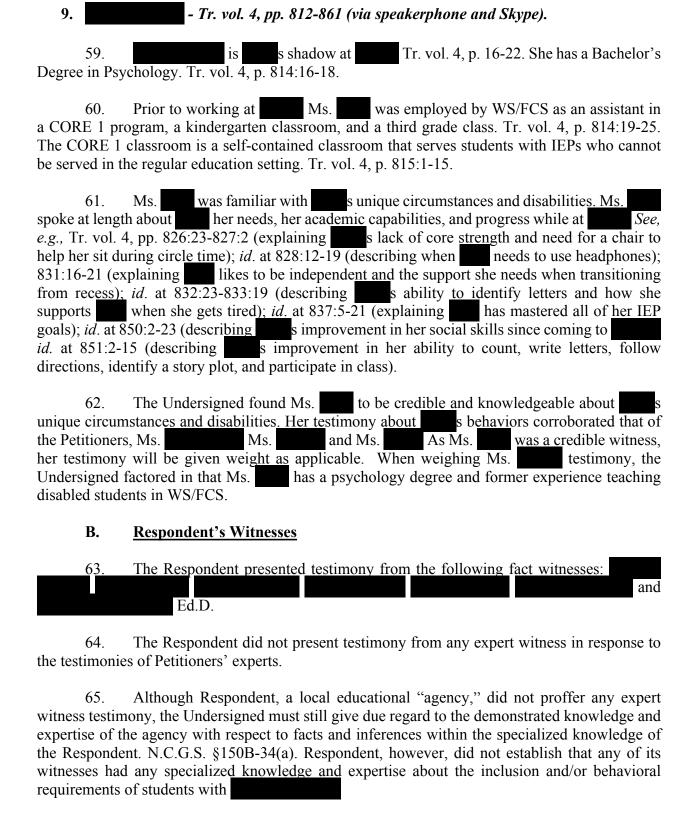
- 35. Petitioner confirmed and supplemented s testimony.
- The Undersigned found s testimony to be corroborated by 36. s educational record and the testimonies of other witnesses. Compare Tr. vol. 3, pp. 613:23-614:7 (Testimony that the school-based members of the IEP team rolled their eyes and shrugged their offered a suggestion at the October 1, 2018 IEP meeting), with Tr. vol. shoulders whenever 4, pp. 672:16-673:6 (Testimony of Ms. that she observed the school-based members of the IEP team rolling their eyes and showing disengagement at the October 1, 2018 IEP meeting); compare Tr. vol. 3, p. 603:4-14 (Testimony of regarding her phone conversation with Principal before the October 1, 2018 IEP meeting), with Tr. vol. 6, p. 1291:7-18 (Testimony of Principal providing a similar recollection of the conversation); Tr. vol. 4, pp. 687:25that she created a handout describing s needs and passed it out at 689:8 (Testimony of the September 11, 2018 IEP meeting), with Stip. Ex. 26, p. 122 (minutes noting the handout).
- 37. Both Parents were strong advocates for and credible witnesses, their testimonies will be given weight throughout this Final Decision.

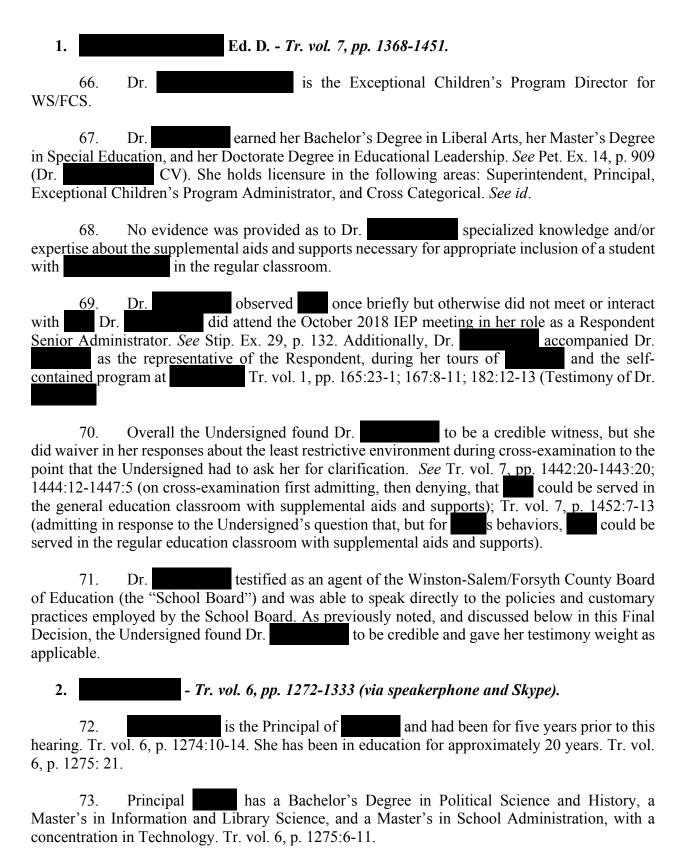
4. M.A., CCC/SLP - Tr. vol. 2, pp. 480-496 (via speakerphone).

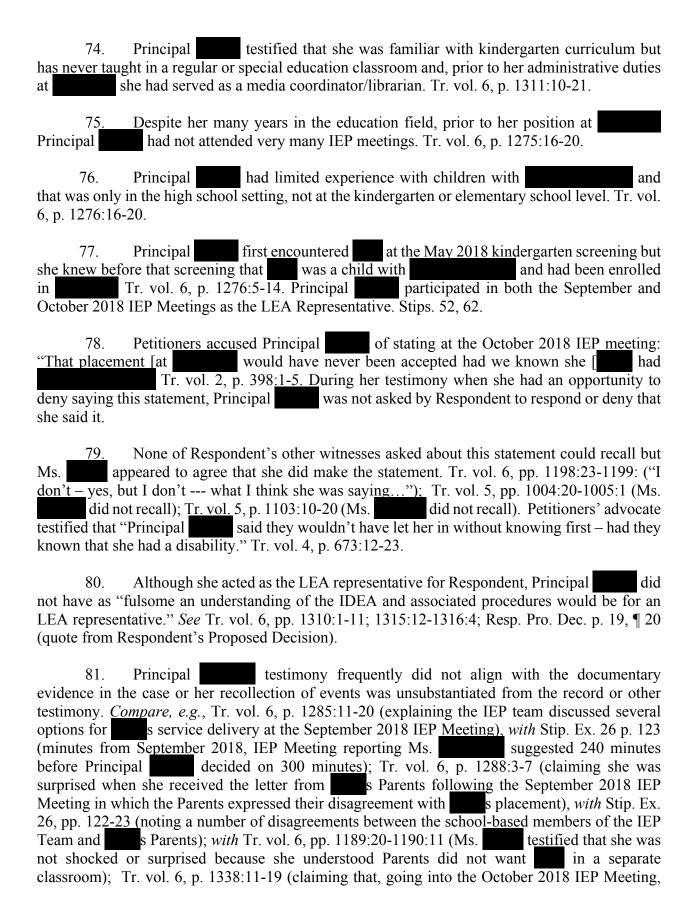
- 38. is a private speech pathologist at Speechcenter, Inc who provided speech therapy to from October 201 to December 201. Pet. Exs. 4, 5, 6; Tr. vol. 2, p. 483:2-8.
 - 39. Ms. earned her Masters' Degree in Speech and Hearing Sciences from

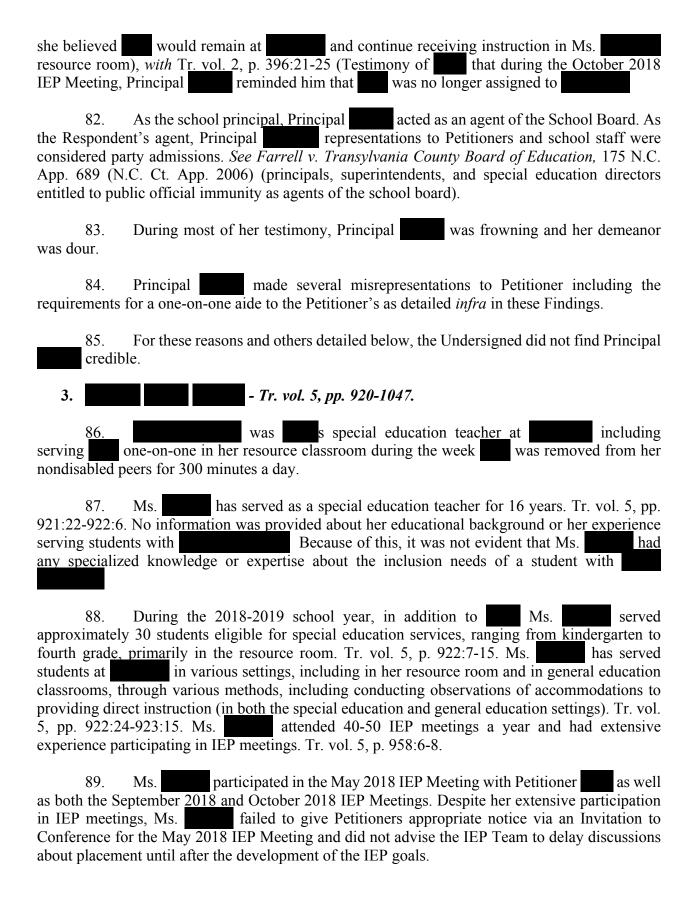


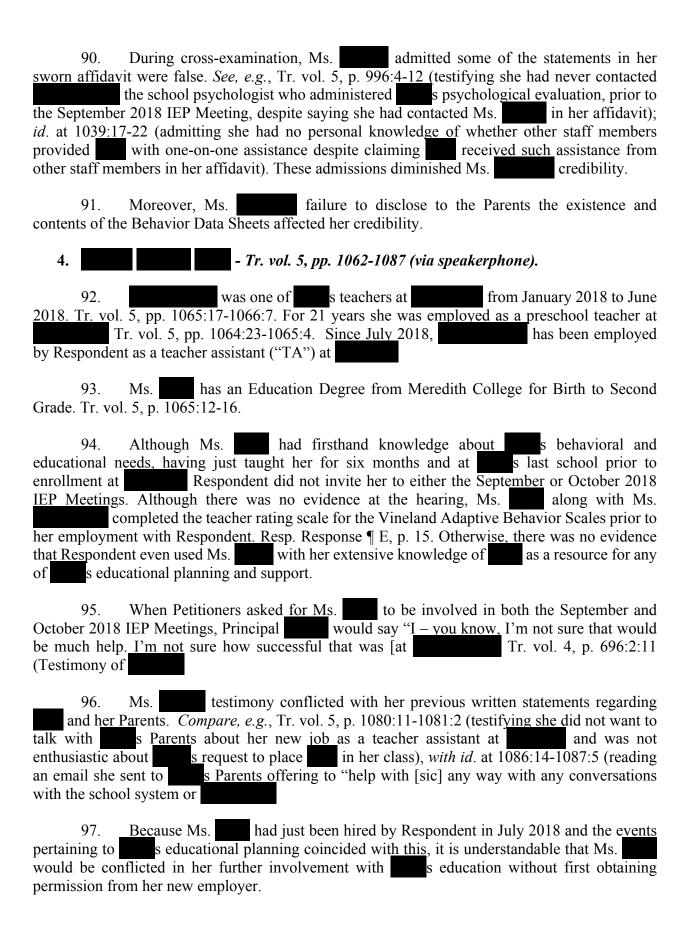


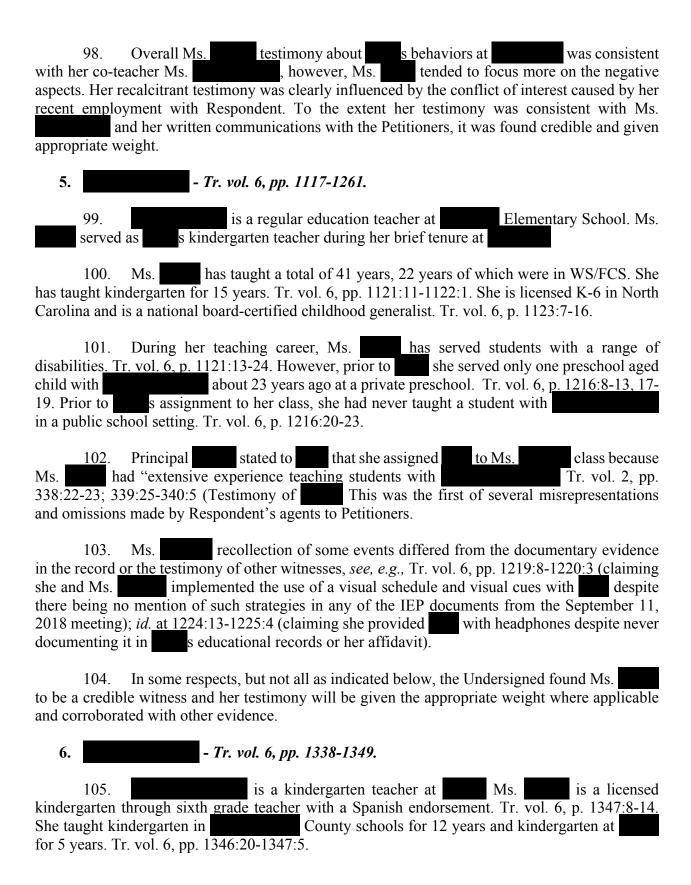


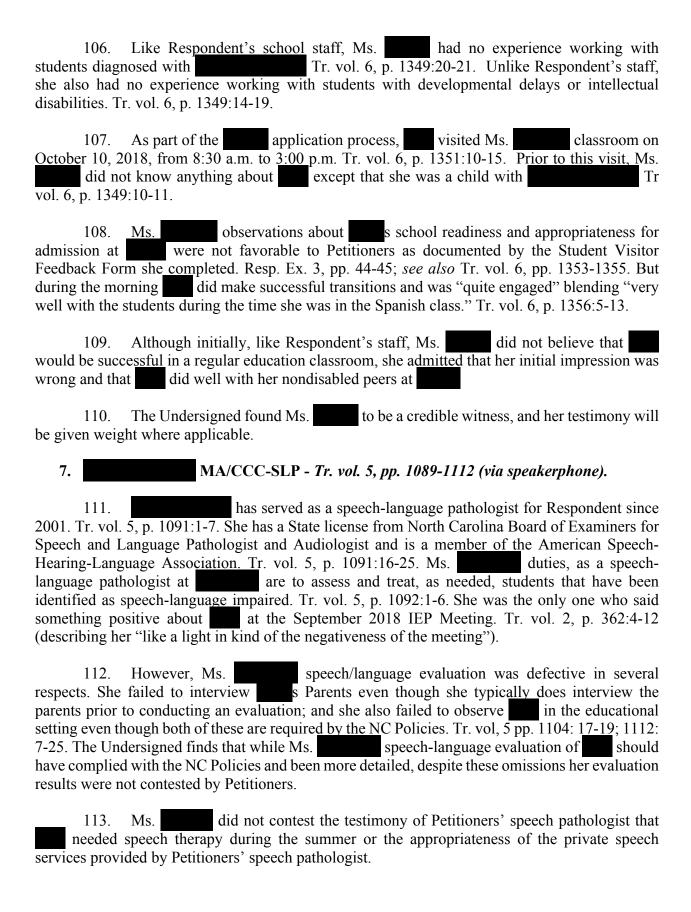


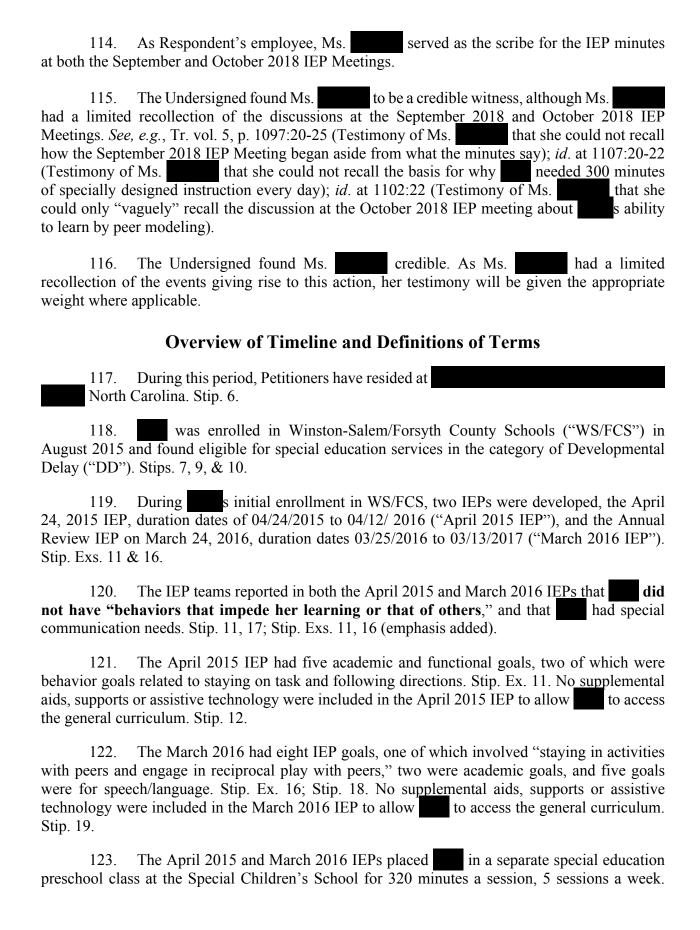


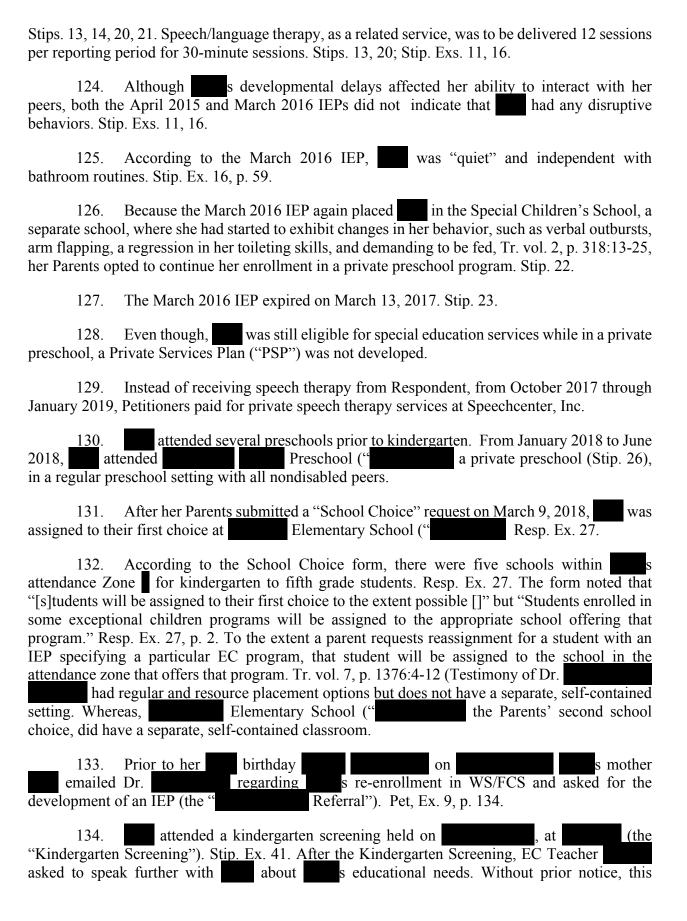






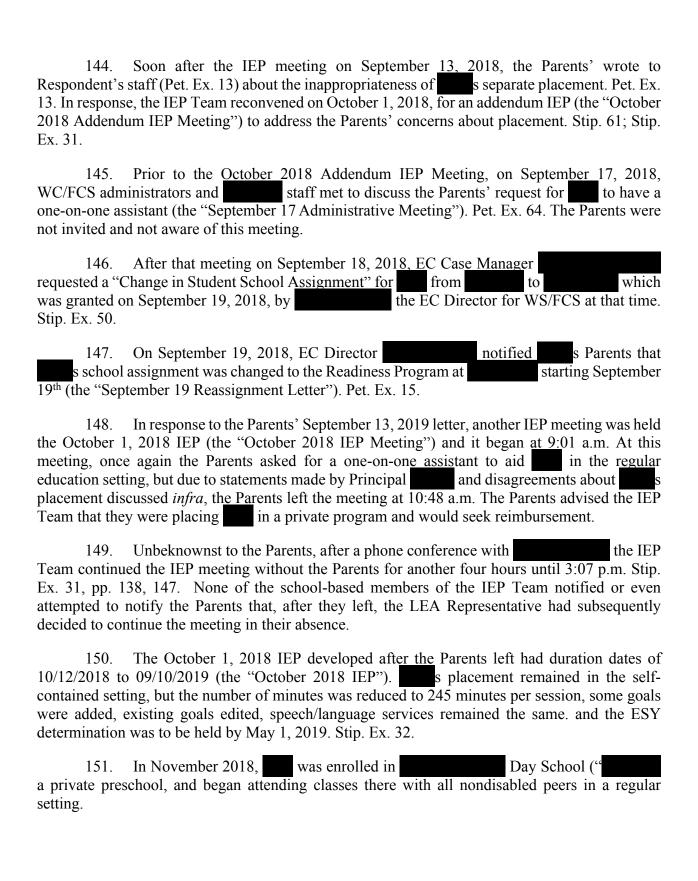






conversation became an Initial Evaluation/Reevaluation Meeting (the "May 2018 Initial Evaluation/Reevaluation Meeting"). Stip. 28; Stip. Exs. 17-21.

- 135. The Invitation to Conference for the May 2018 Initial Evaluation/Reevaluation Meeting dated May 22, 2018, was handed to the same day as the meeting and did not give the Parents 10-day written notice of the meeting. Stip. Ex. 20. did not attend the meeting even though she was listed on the Reevaluation Form ("DEC 7"). Stip. Ex. 20.
- 136. The May 2018 Reevaluation Form noted that there were "[n]o concerns about behavior." Stip. Ex. 20, p. 81. The May 2018 IEP Team decided to conduct formal assessments and did not develop an IEP that day or consider eligibility for Extended School Year ("ESY") services. Stip. Ex. 20, pp. 83 & 84.
- 137. As of the first day of kindergarten August 27, 20 (Stip. 40), the evaluation process had not been completed and did not have an IEP in place.
- 138. Approximately three weeks after school started, an IEP meeting for the reevaluation review and eligibility determination was held on September 11, 2018 (the "September 2018 Reevaluation/Annual Review IEP Meeting"). Stip. 51; Stip. Exs. 22-26.
- 139. At the September 2018 Reevaluation/Annual Review IEP Meeting, an IEP was developed with initial duration dates of 09/12/2018 to 09/10/2019, which placed in the separate setting for 300 minutes per session, five sessions a week (the "September 2018 IEP"). Stip. 58; Stip. Ex. 24.
- 140. The September 2018 IEP Team determined that was eligible for services under the IDEA in the category of Intellectual Disability-Mild ("ID-MILD"). Stip. 53. Although the Prior Written Notice indicated that the continuation of the Developmental Delay ("DD") category was refused (Stip. Ex. 25, p. 117), according to the IEP Minutes and Summary of Evaluation/Eligibility Worksheet, the IEP Team did not discuss continuation of seligibility as Developmentally Delayed even though she was still within the age range (three through 7 years old) for that category. See Stip. Exs. 23, 26.
- 141. Like the April 2015 and March 2016 IEPs, the September 2018 IEP noted that did not have behaviors that impede her learning or that of others, that communication needs, and that was not eligible for extended school year ("ESY") services. Stip. Ex. 24 (emphasis added).
- 142. At the September 2018 IEP Meeting, a separate self-contained placement and asked for a one-on-one assistant so that classroom setting with her nondisabled peers because Stip. Ex. 26, p. 121.
- 143. Implementation of the September 2018 IEP was delayed from September 12th to September 21st to allow some Parents to observe the self-contained placements at and Sherwood Elementary Schools. Stip. 53; Stip. Ex. 26, p. 126.



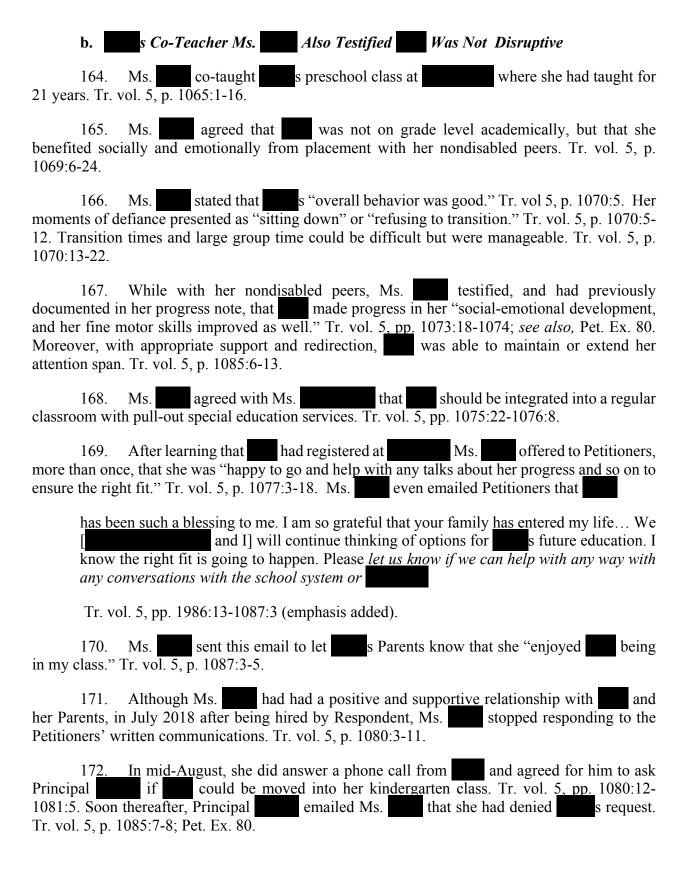
Factors Relevant to s Behaviors and Placement in a Regular Classroom with Nondisabled Peers

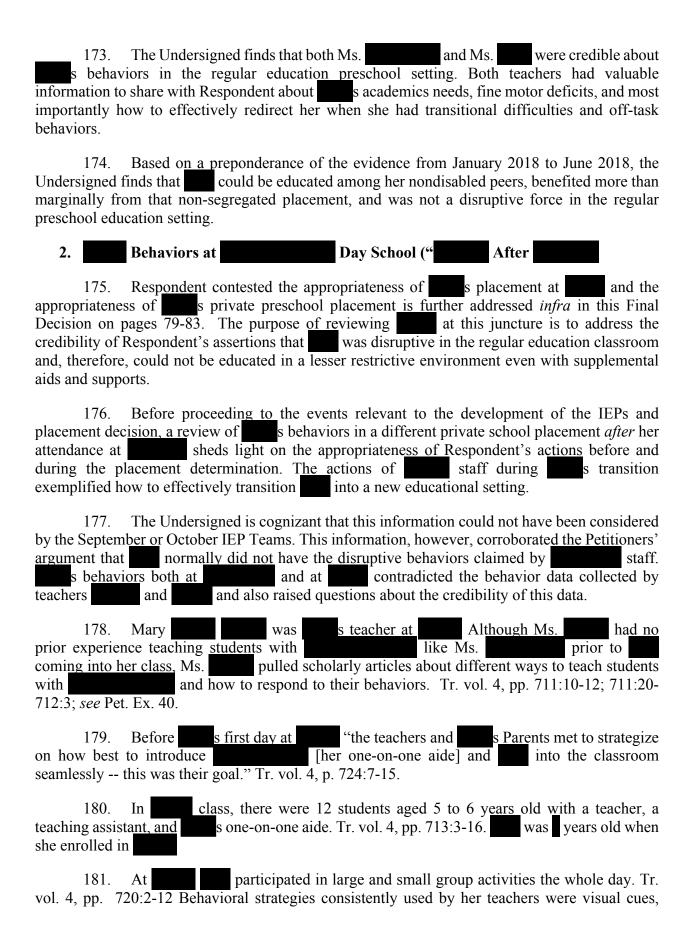
s Behaviors Before and After Her Attendance at Elementary School
had academic deficits these could be accommodated in the regular classroom, her behaviors at were the primary reason that she was segregated from her nondisabled peers. Tr. vol. 7, p. 1452:7-13 (Admission of Dr. Before and after attended could access the regular classroom curriculum alongside nondisabled students.
1. Behaviors at Before Attending
from 9:00 a.m. to 1:00 p.m. Stip. 26; Tr. vol. 4, p. 653:1-5. There were two teachers and eleven students in sclassroom. Tr. vol. 4, p. 652:16-23. None of the other students were disabled. Tr. vol. 4, p. 652:19-21. All of scindergarten. Tr. vol. 4, p. 653:21-23. Seven were assigned to attend kindergarten with Tr. vol. 4, p. 654:17-22.
s preschool co-teacher with at Although Ms. Was not one of Petitioners' witnesses, both she and Ms. It testified similarly about special which was seducational placement the 6-month period immediately prior to her attendance at and also jointly completed the eacher portion of the Vineland Adaptive Behavior Rating Scales. Resp. Response to Pet. Supp. Doc. p. 15.
155. In July 2018, Ms. was employed by Respondent as a teaching assistant ("TA") in one of the kindergarten classes at until then, Ms. had had a good relationship with and been supportive of senrollment in kindergarten, even the point of offering to help her Parents in "any way possible" to ensure that got the "right fit" reducationally. Tr. vol. 5, pp. 1086:13-1087:3. After Respondent hired her as a TA, Ms. stopped communicating with the Petitioners and their advocate,
a. Lead Teacher Testified that Was Not Disruptive
156. Ms. was steacher in her preschool class at Ms. described as a loving, "highly functioning [student] for Tr. vol. 4, p. 650:18, 22. responded well to positive reinforcement. Tr. vol. 4, p. 650:20-21.
157. was the third student with that Ms. had taught and the "highest functioning." Tr. vol. 4, p. 651:2-4. Ms. did not have any specific but she educated herself by reading
5 Ms. testified in Petitioners' case in chief. Ms. testified for Respondent.

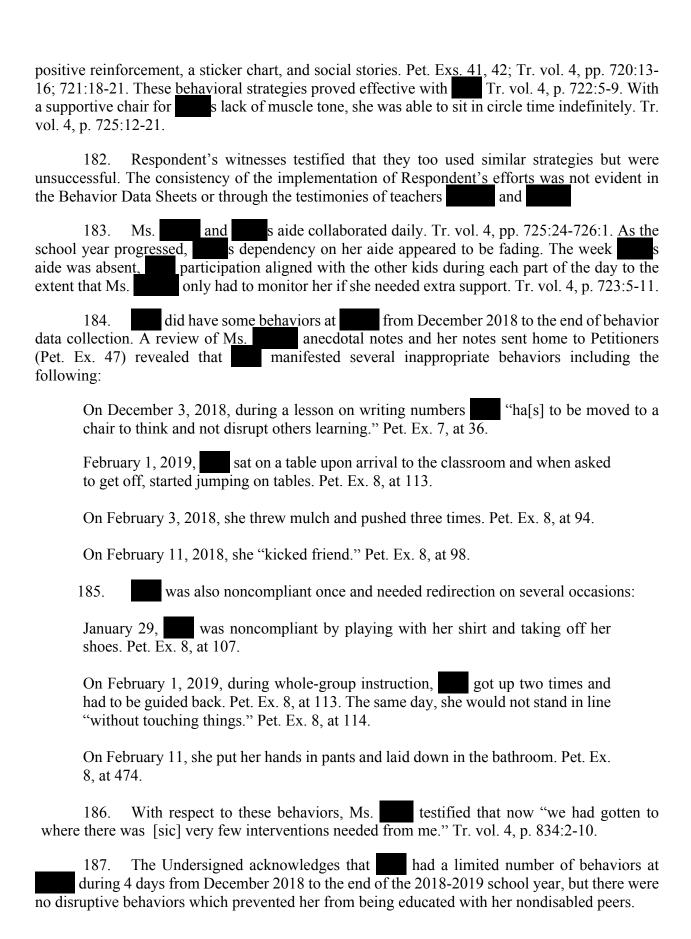
about such students and looking for ways to help them in her class. Tr. vol. 4, p. 651:5-9. had "positive relationships" with her According to Ms. nondisabled peers in her classroom, enjoyed different centers in the classroom, and enjoyed all music activities. Tr. vol. 4, p. 651:10-14. was able to independently go to the centers without support. Tr. vol. 4, p. 651:15-18. also had noticeable fine motor and speech deficits. Tr. vol. 4, p. 651:19-21. After reading about the best way to work with children with because of fine motor deficits, Ms. recognized that such activities were difficult for spring-loaded scissors. Tr. vol. 4, pp. 651:24-652:9. exhibited some distracting behaviors at 160. such as lack of attention, trouble sitting up during circle time, crawling under the table and under her desk, getting out of her seat, and difficulty with transitions. Pet. Ex. 80. The main difficulty with usually happened around 12:30 p.m. By that time, would be tired and want to lie down on the floor or crawl under a table but had no other negative behaviors. Tr. vol. 4, pp. 653:8-17; had "excellent relationships with all the children" planning on 659:12-18. Otherwise, attending the 2018-2019 school year. Tr. vol. 4, p. 654:23-25. classroom, never exhibited behaviors that Respondent's In Ms. 161. school staff swore in their affidavits that she did such as throwing instructional materials, putting materials and objects in her mouth, licking other students, yelling at staff, taking/ripping/coloring on other students' instructional materials, drinking out of a toilet, or attempting to strangle other students. Tr. vol. 4, pp. 658:23-659:19. was not on grade level and had other needs, Ms. 162. supportive of receiving special education services, speech and occupational therapy in the public school system. Tr. vol. 4, p. 654:1-16. Ms. testimony corroborated her September 16, 2018 letter⁶ in support of a classroom assistant as a supplemental support for because, although could be "stubborn" at times, she benefited from observing and mimicking her peers, peer interaction, and cooperative learning. Pet. Ex. 78; see Tr. vol. 4, pp. 656-658. Ms. could be successful in the regular education classroom with pullbelieved that out services for her special needs and a one-on-one aide. Tr. vol. 4, p. 658:22-25; Pet. Ex. 78. The Undersigned found Ms. to be a credible, unbiased witness. Her s behaviors among her nondisabled peers supported Petitioners' testimony regarding argument that was not disruptive to her peers in the regular education classroom setting and benefited from the lesser restrictive placement.

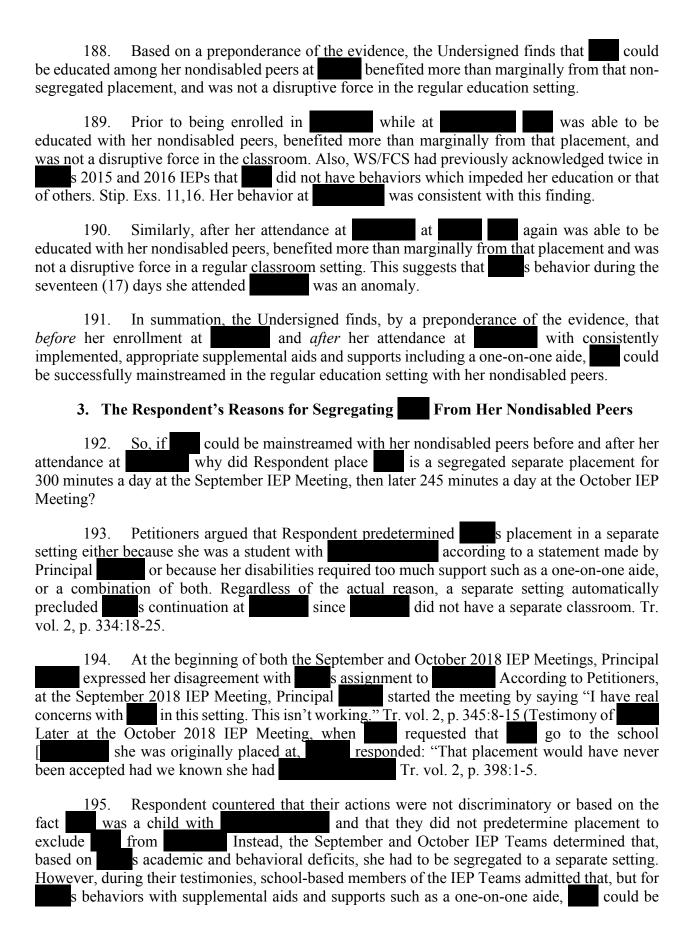
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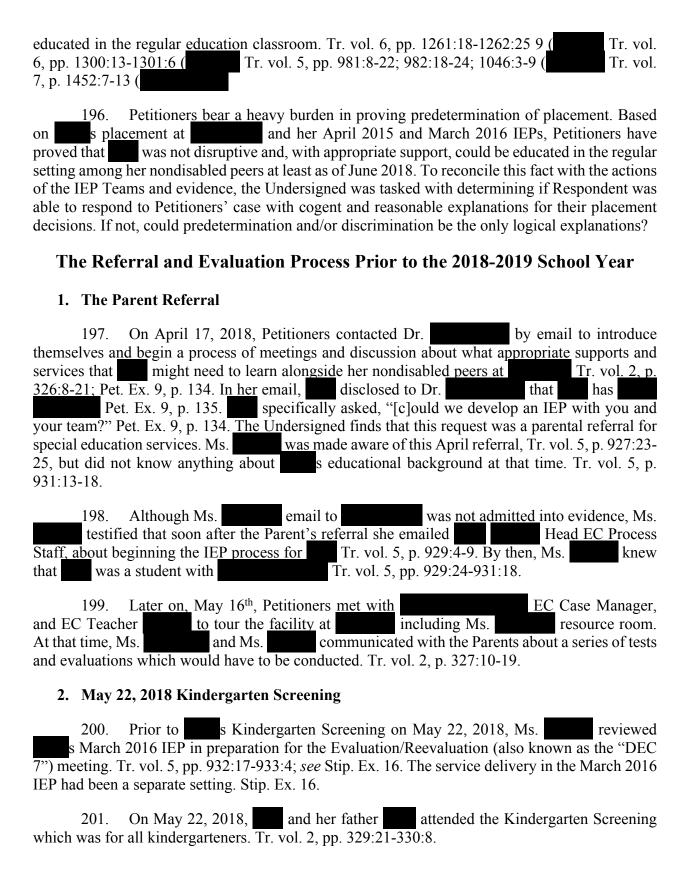
letter was not provided to the October 2018 IEP Team.

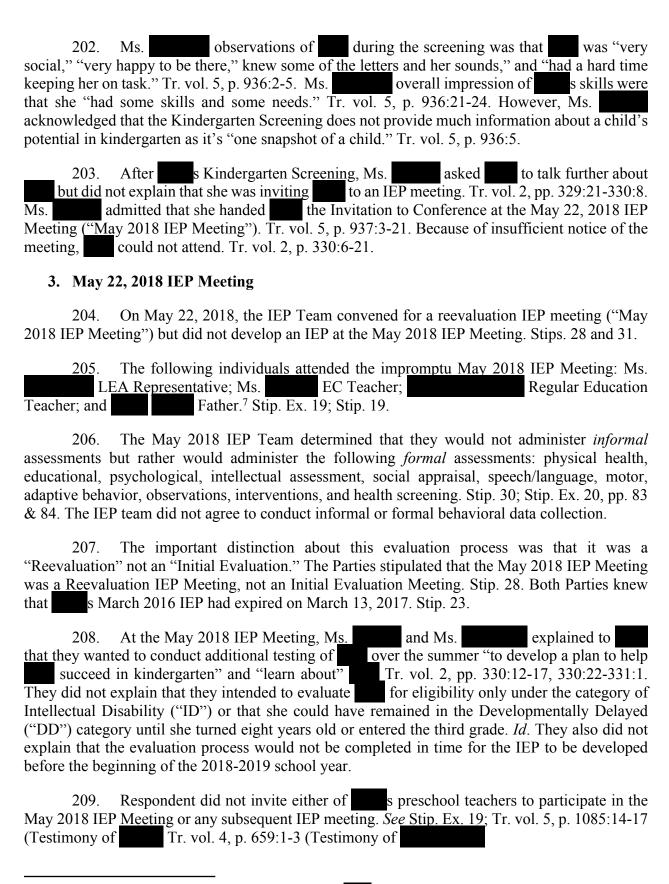




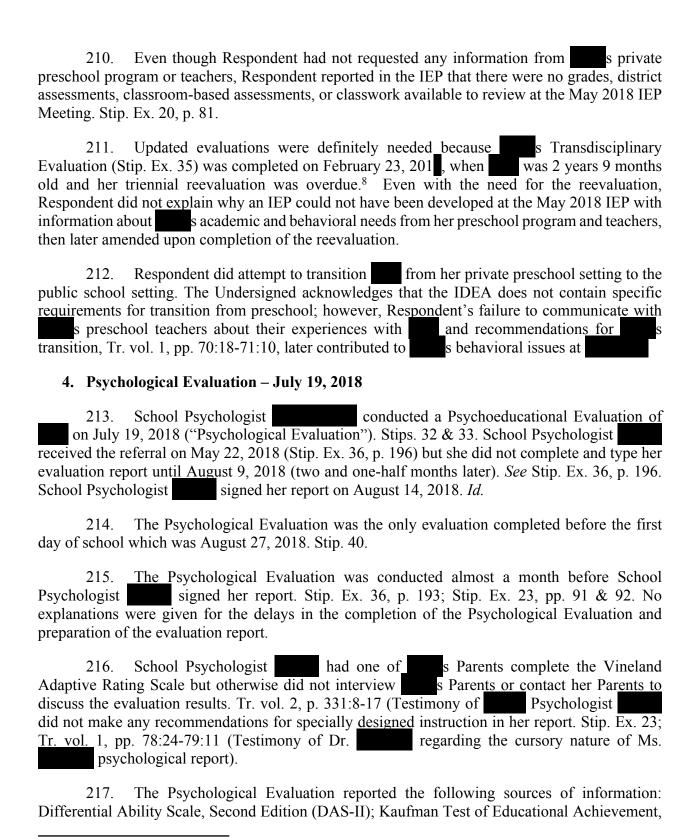








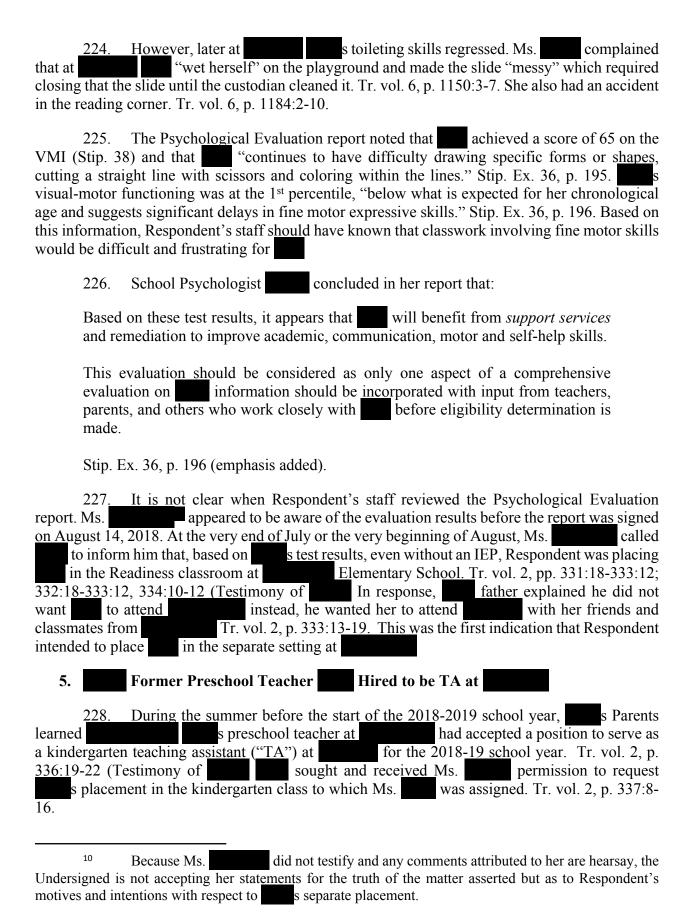
The DEC 7 inaccurately reported that attended the meeting. Stip. Ex. 20, p. 75.

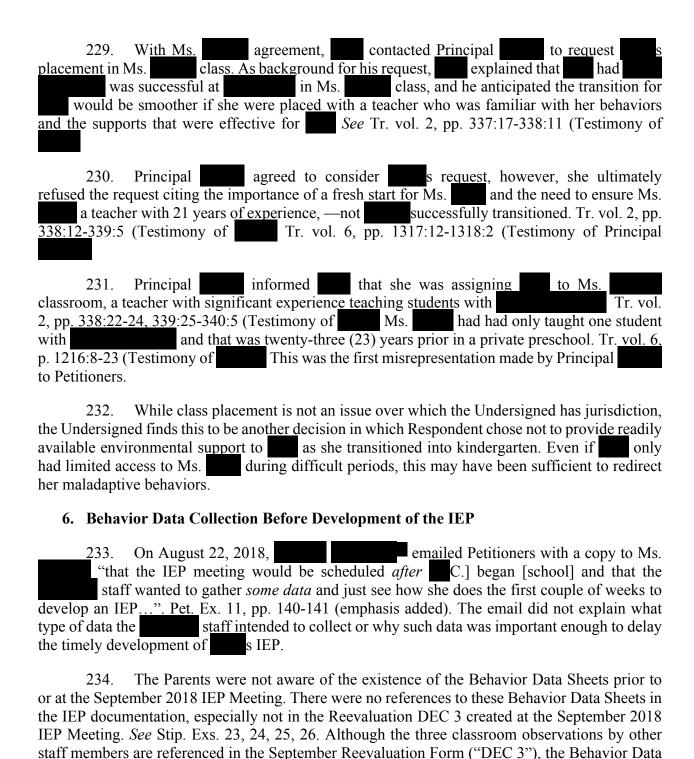


A reevaluation of a child identified as developmentally delayed must occur at least once every three years following placement and prior to turning eight years of age, or prior to entering the third grade. NC Policy 1503-2.4; 20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b)(2).

Third Edition (KTEA-III); Vineland Adaptive Behavior Scales (VABS); and the Berry Developmental Test of Visual-Motor Integration (VMI). Stip. 34 Although was only years old, had just completed preschool at the time of the evaluation, and presented with a developmental disability, School Psychologist improperly administered the school-age version of the DAS-II, which was normed for students through 7 years 11 months of age, rather than the preschool battery. See Tr. vol. 1, p. 141:3-7 (Testimony of Dr. At the hearing, no school psychologist testified in response to Dr. opinion that the DAS-II was an improper test instrument. Most significant in this Psychological Evaluation was that on the DAS-II ability rating, had an average nonverbal standard score of 101. Stip. 35. 77 and her spatial standard score a 46, which lowered her overall score ability standard score to 68. Stip. 35. The 101 standard score was later incorrectly reported on the September 2018 IEP as a standard score of 53. Stip. Ex. 24, p. 98. School Psychologist reported that s nonverbal skills reflected "an area 219. of relative strength on tasks that include inductive reasoning and sequential and quantitative reasoning skills." Stip. Ex. 36, p. 194. Also during the evaluation, "[C.] was able to adequately identify and name pictures and solve picture sequence and puzzles." Stip. Ex. 36, p. 194. Later, School Psychologist did not attend the September 2018 IEP to explain her report, particularly the impact of saverage nonverbal IQ score (101), nor did any other person attend who was qualified to interpret the evaluation results. See Stip. Ex. 26. Despite her average nonverbal ability, according to her achievement testing, had significant deficits in letter and word recognition (SS 68), written expression (SS 40), math computation (SS 47), and math concepts (SS 48). Stip. 36. School Psychologist s "speech was marked by numerous articulation errors." Stip. Ex. 36, p. 194. 222. s preschool teachers and and her mother completed the Vineland Adaptive Behavior Rating Scales ("VABS"). composites were 73 (preschool teacher) and 75 (parent). Stip. 37. socialization scores were in the low average range of 86 (preschool teacher) and 84 (parent). Stip. 37. Overall, was able to "meet her basic self-care needs [] but continue[d] to need help with brushing her teeth, bathing, dressing, and changing her clothes." Stip. Ex. 36, p. 195. still had toileting accidents at night, but there was no report of toileting accidents during the day. Stip. Ex. 36, p. 195. This is consistent with stestimony that "was proficient at potty training" and this proficiency was also noted on the March 2016 IEP. Tr. vol. 2, pp. 321:22-322:6; Stip. Ex. 16, p. 59.

The Psychological Evaluation report did not disclose whether Ms. or Ms. competed the preschool teacher rating scales, however, the Respondent responded in supplemental documentation that both teachers jointly completed he teacher version of the rating scale. *See* Stip. Ex. 36, p. 195 and Resp. Response to Pet. Supp. Doc. p. 15.





^{235.} Because of the significance of the Behavior Data Sheets, the Undersigned needed information from the Parties as to the disclosure of this information. In the Order for Additional

Sheets were not. Stip. Ex. 23.

This communication, although hearsay, is used to corroborate that the collection of data was used to delay the timely completion of the IEP not for the truth of the matter asserted.

Supplemental Documentation from the Parties filed on July 30, 2019, the Undersigned asked the Petitioners to:

Parents were made aware that s EC Teacher and Regular Education Teacher were tracking s behaviors [Question 1], when Respondent disclosed the existence of the Behavior Tracking Sheets which are Stipulated Exhibit 38 [Question 2], and when Respondent showed or gave copies of the Behavior Tracking Sheets to the Parents or their legal counsel [Question 3].

236. Respondent was asked similar questions:

With respect to the Behavior Data Sheets (Stip. Ex. 38), Respondent is to indicate in the transcript and evidentiary documents, including discovery, when Respondent advised the Parents that Respondent was keeping daily behavior data [Question 1] in the form of Behavior Data Sheets, not academic data, and when Respondent disclosed the existence of the Behavior Data Sheets [Question 2] and actually showed them or gave them to the Parents or their legal counsel [Question 3].

Order dated July 30, 2019, p. 1.

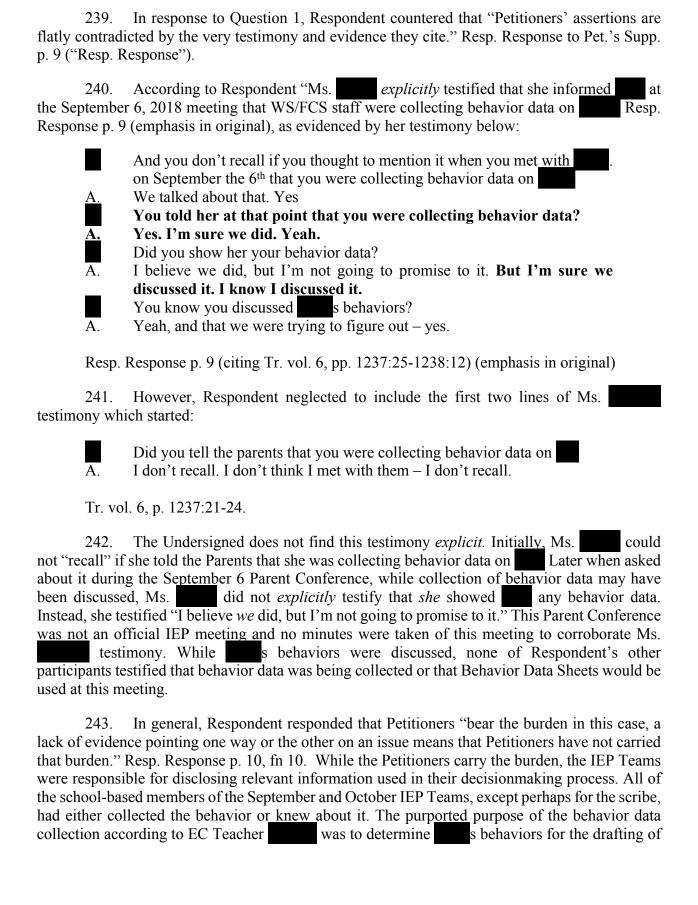
237. With respect to Questions 1 and 2, according to Petitioners:

Respondent never made Petitioners aware that second second second regular education teacher were tracking second s behavior tracking sheets (i.e., Stipulated Exhibit 38). Tr. vol. 2, p. 362:13-15 (testimony of that s IEP team did not share any data it had collected on during the September 11, 2018 IEP meeting); see also Pet. Ex. 58 (Dr. notes from the October 1, 2018 IEP meeting containing no mention that behavior data sheets were reviewed). Ms. testified that generally discussed s behaviors at each of her IEP meetings but did not testify that the WS/FCS shared behavior data with sparents. Tr. vol. 5, pp. 974:4-15, could not say for sure if she made s parents 1000:8-11, 1023:5-10. Ms. aware during the September 6, 2018 meeting or the October 1, 2018 IEP meeting were collecting behavior data or if the IEP team shared that she and Ms. the behavior tracking sheets with sparents. Tr. vol. 6, pp. 1238:4-9, 1241:19-22.

Pet. Am. Supp. Doc. ¶ 13.

238. With respect to the disclosure of the Behavior Data Sheets, Stip. Ex. 38 (Question 3), Petitioners stated:

Respondent did not provide copies of the behavior tracking sheets in response to Petitioners' September 24, 2018, school records request. Respondent provided the tracking sheets to Petitioners' counsel on December 12, 2018, in response to Petitioners' first informal discovery request. Id. ¶ 14.



the IEP. If such behavior was not discussed at the IEPs, what other purpose did Respondent have for collecting of behavior data and documenting it on Behavior Data Sheets?

244. In response to Question 1, regarding the September 2018 IEP Meeting Respondent responded that:

The other record citations indicated by Petitioners similarly do not support Petitioners' assertion that they were never informed about the tracking of behavior data. It is referenced testimony simply asserts that in the specific context of completing the eligibility paperwork at the September 11, 2018 meeting, the IEP team did not share data it had collected on Tr. vol. 2, p. 362:13-15 ("In completing this form, did the IEP team share any data that it had collected on at this meeting? A. No.") (emphasis added). He was not asked about whether behavioral data was shared at any other time at that meeting or at the October 1, 2018, meeting, and his testimony is silent on that point.

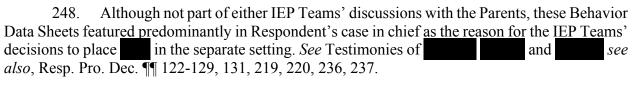
Resp. Response p. 10.

245. With respect to the October 2018 IEP Meeting, in response to Questions 2 and 3, Respondent answered:

Petitioners note that Dr. _______ notes from that meeting "contain no mention that behavior data sheets were reviewed." Petrs' Am. Supp. Doc. ¶ 13. However, Petitioners pointedly did not reference the actual minutes from that meeting, which clearly indicate that the behavior data was in fact reviewed during the meeting. Stip. Ex. 31, at 147-48 ("Reviewed existing data...Reviewed Behavior – 2 formal writeups – for choking a student and pulling the fire alarm. A current behavior chart is implemented in the classroom – Regular ed and EC small group setting. Based on behavior chart student exhibits behaviors of non-compliant refusal behaviors, tantrums, physically aggressive toward peers, overstimulation and transition cause disruption and non-compliance.") (emphasis added).

Resp. Response p. 10 (referring to Stip. Ex. 31, pp. 147-48).

- 246. Both the October 2018 IEP Minutes, Stip. Ex. 31, p. 147, and the Prior Written Notice, Stip. Ex. 29, p. 128, referred to discipline records and daily event recording sheets." Stip. Ex. 29, p. 128. The "behavior chart" mentioned in the October 2018 IEP minutes was not part of the hearing exhibits. The minutes indicated that the review of the "behavior chart" occurred after the Parents and their advocates left the October 2018 IEP Meeting. The propriety of the Parents' decision to leave the October 2018 IEP Meeting is discussed later.
- 247. While the Parents may have been aware of some collection of behavior data, there was no evidence showing that Respondent disclosed to the Parents the actual method of behavior data collection or the existence of Behavior Data Sheets at any time before, during, or after the September 2018 IEP or October 2018 IEP Meetings.



249. Simply telling the Parents that the school staff was collecting behavior data was not sufficient without full disclosure of the data information as shown on the Behavior Data Sheets.

Solution Parents cannot meaningfully participate in decisionmaking at the IEP Team meetings without having all the relevant information. Especially when the behavior data was extraordinary as shown *infra* on page 47.

The Beginning of the 2018-2019 School Year at Elementary School

1. No IEP at the Beginning of 2018-2019 School Year

- s kindergarten orientation was held the morning of August 23, and the school-wide open house was held that evening. Petitioners were unable to attend either event because of an important, prior family commitment. Tr. vol. 2, pp. 427:18-428:6; 428:23-429:2 (Testimony of Petitioners had previously visited and toured the facility on May 16, 2018.
- 251. On August 27, 2018, started the 2018-2019 school year enrolled in kindergarten at Stip. 39. Stip. 39. Stip. 40.¹² from August 27, 2018 to October 1, 2018. Stip. 40.¹²
- 252. For the 2018-2019 school year, the length of the school day at minutes. Post-Hearing Stip. 1. For the 2018-2019 school year, the amount of instructional time during the school day (i.e. excluding lunch) at was 360 minutes. Post-Hearing Stip. 2.
- 253. It is uncontested that did not have an IEP in place when she started school. Regardless of whether this was an initial IEP or annual review IEP, Respondent substantively violated the IDEA by not developing an IEP before the school year started. Respondent purportedly delayed development of the IEP to allow for the collection of data. Yet, the only data collected before the September 2018 IEP Meeting was in the Behavior Data Sheets which were not even disclosed to the Parents or reviewed at the September 2018 IEP Meeting.
- 254. Respondent offered no other reason for not timely developing the state in the school year started; therefore, the Undersigned finds that Respondent failed to provide a cogent or reasonable explanation why step is IEP could not be developed in a timely manner.

Stipulation 40 incorrectly stated that the dates are "August 27, 2019 to October 1, 2019," but the actual dates were August 27, 2018 to October 1, 2018. The Parties initialed the correction.

s Kindergarten Class s regular education kindergarten teacher at 255. was Stip. 41. Ms. special education teacher was had already been involved in the May 2018 IEP Meeting and knew that was going to attend Sometime before school started Ms. was informed by Principal 256. was going to be in her kindergarten class. Tr. vol. "the student that came with understood from Principal 6, p. 1131:5-11. Ms. that was assigned to her class because she "had more experience with EC children...[and] making modification than most of the other teachers." Tr. vol. 6, p. 1131:5-15 (Testimony of and her teaching assistant 257. Ms. served twenty (20) students, including in their kindergarten classroom as of the start of the 2018-2019 school year. Stip. 42. It was not disclosed how many of the other kindergarten students in Ms. class were disabled, but to the extent any other student had an IEP, it would have been for services in the regular and/or resource classrooms.

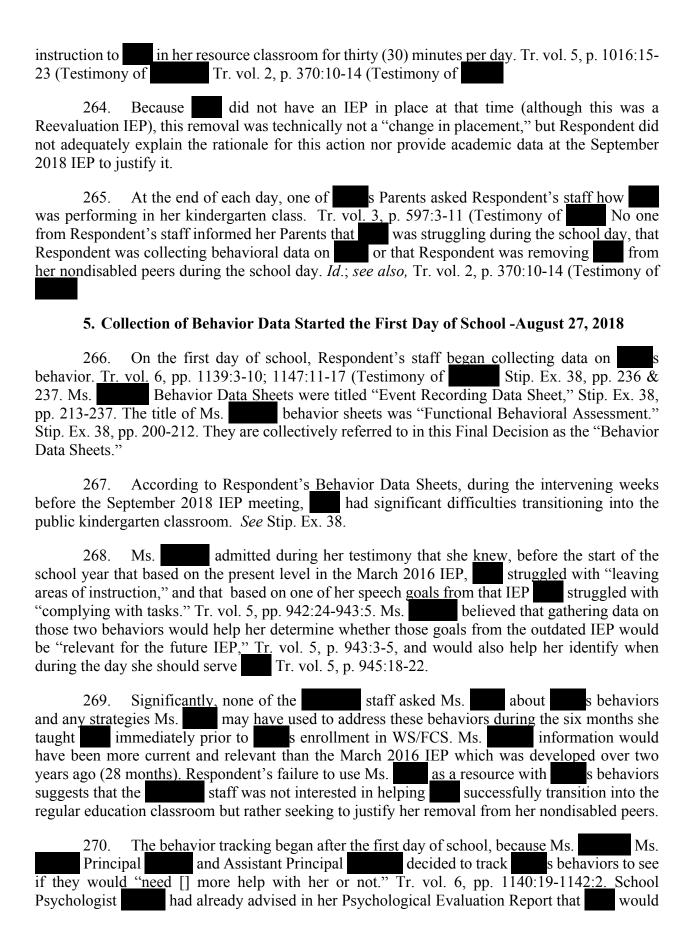
258. Both steachers had reviewed the Psychological Evaluation report prior to the beginning of the 2018-2019 school year. Tr. vol. 5, p. 941:8-13 (Ms. reviewed "middle of August"); Tr. vol. 6, p. 1129:10-18 (Ms. reviewed "probably the week of August 18th"). Based on their review, both of steachers should have known that had severe fine motor deficits, but they provided no assistive technology, such as spring loaded scissors or other accommodations during instructional activities. Both teachers should also have known that based on the Psychological Evaluation that had severe communication deficits and "will benefit from support services." Stip. Ex. 36, p. 196.

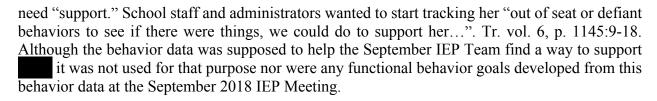
3. Speech/Language Evaluation – August 30, 2018

- 259. On August 29, 2018 and August 30, 2018, Respondent conducted a speech-language evaluation of ("Speech/Language Evaluation"). Stip. 43.
- 260. The Speech/Language Evaluation had not been completed before the beginning of the school year. Stip. Ex. 37. It was completed on August 30, 2018. Stip. 43.
- 261. Conducted the Speech/Language Evaluation. Stip. 44; Stip. Ex. 37. Ms. failed to interview either one of speech/Language Evaluation. Stip. 44; Stip. Ex. 37. Ms. Failed to interview either one of speech/Language Evaluations. Tr. vol. 5, pp. 1104:17-19; 1112:7-15. According to the Speech/Language Evaluation, articulation, severe receptive and expressive language deficits. Stip. Ex. 37; Stips. 47-49.
- 262. Respondent offered no explanation as to why the Speech/Language Evaluation could not have been completed in sufficient time to have an IEP meeting before school started.

4. First Unilateral Removal from Regular Education – 30 Minutes

263. On s third day of kindergarten, without the knowledge or consent of s Parents, Ms. began removing from her regular education class and providing





- agreed to document behavioral data for See Stip. Ex. 38, pp. 213-237. Ms. recalled that she discussed the data sheets with Ms. on Friday, August 24, before s first day of school. Tr. vol. 5, pp. 941:19-943:18. Ms. however, recalled speaking with Ms. about the forms and how to use them after the first day of school on August 27, 2019. Tr. vol. 6, pp. 1141:121142:5, 1145:6-21.
- before school started in anticipation of tracking such sheaviors. Ms. did not explain why she did not recommend a Functional Behavior Assessment ("FBA") at the May 22, 2018, Initial Evaluation/Reevaluation Meeting since she had gleaned from the March 2016 IEP's present levels and speech goals that may have behavioral issues. Neither Ms. Ms. nor Principal explained why, after they met and decided to track she behaviors, no one asked the Parents for permission to conduct an FBA.
- 273. At the September 2018 IEP Meeting, Petitioners requested an FBA before placement was finalized. Stip. Ex. 26, p. 124. When Respondent declined to conduct the FBA before placing in a segregated setting, Respondent still did not disclose the existence of the Behavior Data Sheets to the Parents. Respondent continued collecting the data after the September IEP Meeting even though it was not intended to be FBA data. Tr. vol. 5, p. 944:12-16 (Testimony of
- 274. Placement was clearly the school based IEP Team members' primary concern at the September 2018 IEP Meeting. Stip. Ex. 26, p. 124 ("Team agreed that [FBA] needs to be done but want[s] to finalize placement next week.").
- 275. Each Behavior Data Sheet recorded "noncompliant" and "out of seat" behaviors. The forms themselves do not define what constitutes "noncompliant" or "out of seat" behaviors. Moreover, the parameters of the data collection were not disclosed on the form. So, it is unclear if each check mark denotes one out of seat behavior or a series of such behavior. In some instances, the forms indicated as many as 20 behaviors during a 30-minute interval without explaining if this was a continuation of one behavior or a series of separate behaviors. *See* Stip. Ex. 38, pp. 220, 226, 227, 234.

276. Respondent's data of sums "noncompliant" and/or "out of her seat" behaviors was overwhelming. From August 27 to September 6 (Parent Conference), from September 6 to September 11 (September 2018 IEP Meeting), and from September 11 to October 1 (October 2018 IEP Meeting) as recorded on Stip. Ex. 38, the data¹³ was as follows:

OUT OF SEAT

NONCOMPLIANT

Date	Class		Class	S	Class	Total
August 27	67 (69)14		85 (89)			152
August 30	27	10	57	13		107
August 31	27	5	26	7		65
September 4	35	8	15	9		67
September 5	15		34			49
September 6	70		77			142
Subtotal:	241	23	294	29		587
September 7	45	10	70	16		141
September 10	30		97			127
September 11	5	5	45	12	(fire alarm)	67
Subtotal:	321	38	506	57		922
September 12		15		30		45
September 17	15	10	34	16		75
September 18	26	35	50	55		166
September 19	41	14		31		91
September 20	24/4215	52		77		77/171
September 25		0	<u> </u>	7	(strangulation)	7
Totals	427	164	588	273		1383

Noncompliant and Out of Seat Combined With 1:1 in EC Resource Class

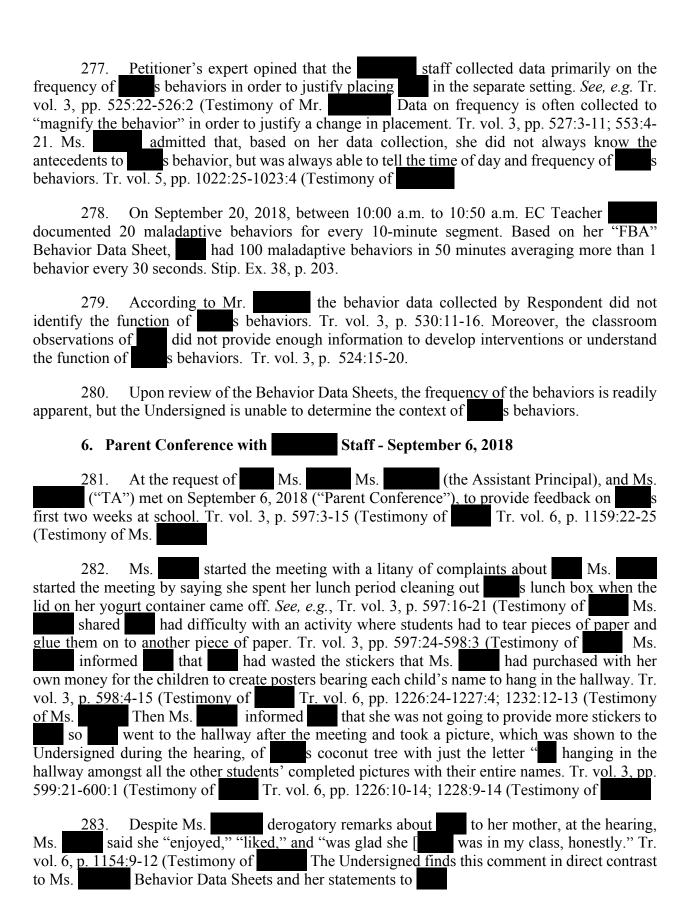
September 26	3	3
September 27	6	6
Totals	9	9

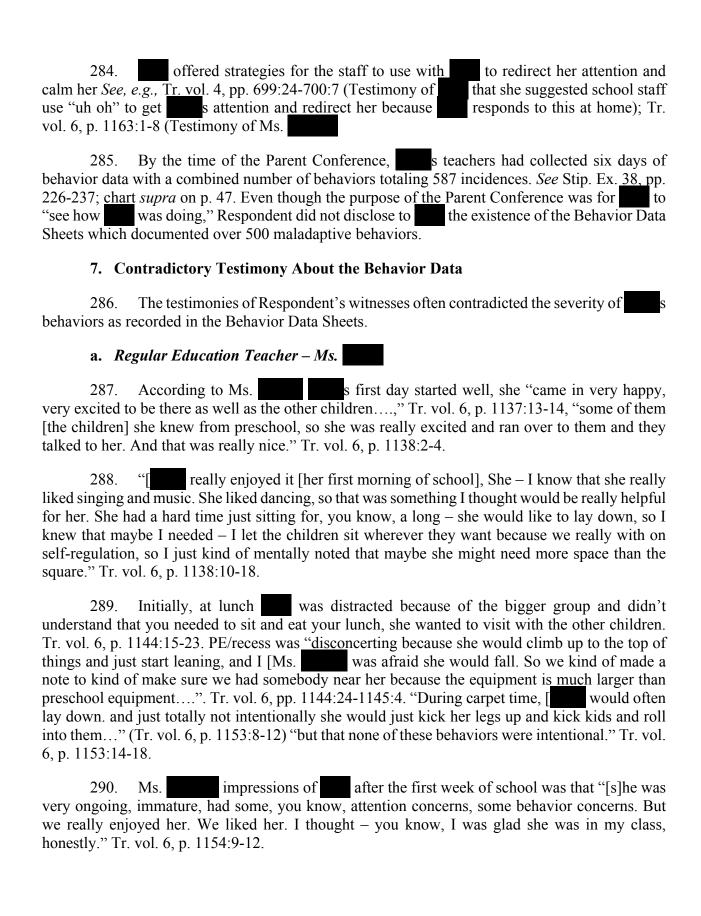
See Stip. Ex. 38.

The numbers in Respondent's Proposed Final Decision differ from the Undersigned's calculations which are based exclusively on the Behavior Data Sheets in Stipulated Exhibit 38. *Compare* Respondent's Amended Pro. Final Dec. pp. 35-37. Whether using the Respondent's calculations or the Undersigned's, the result is the same – an extraordinary number of maladaptive behaviors.

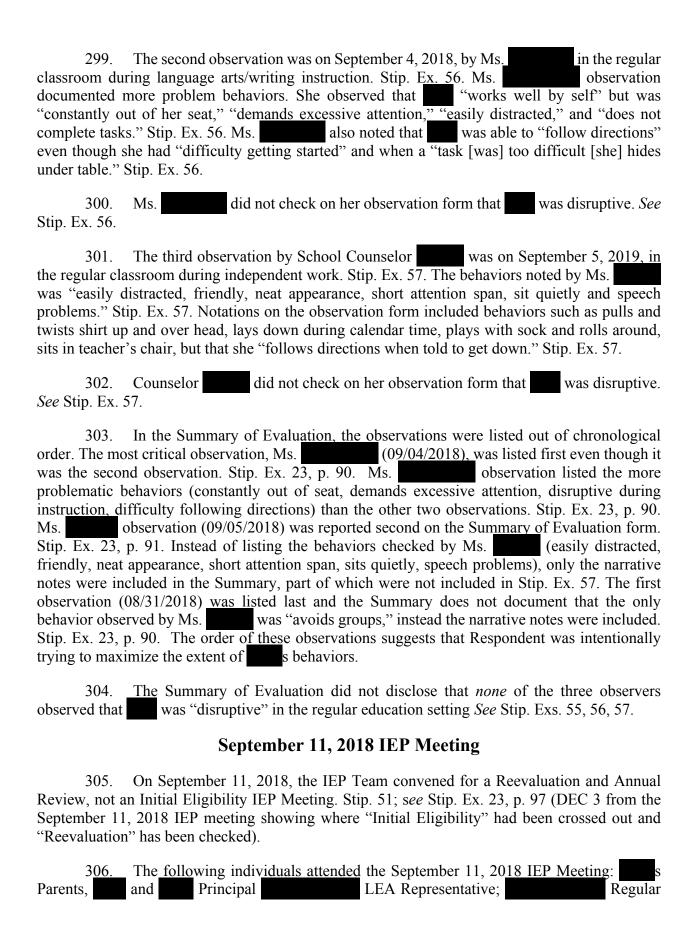
According to Respondent's witnesses, this date was incorrect on the forms and should have been August 29, 2018.

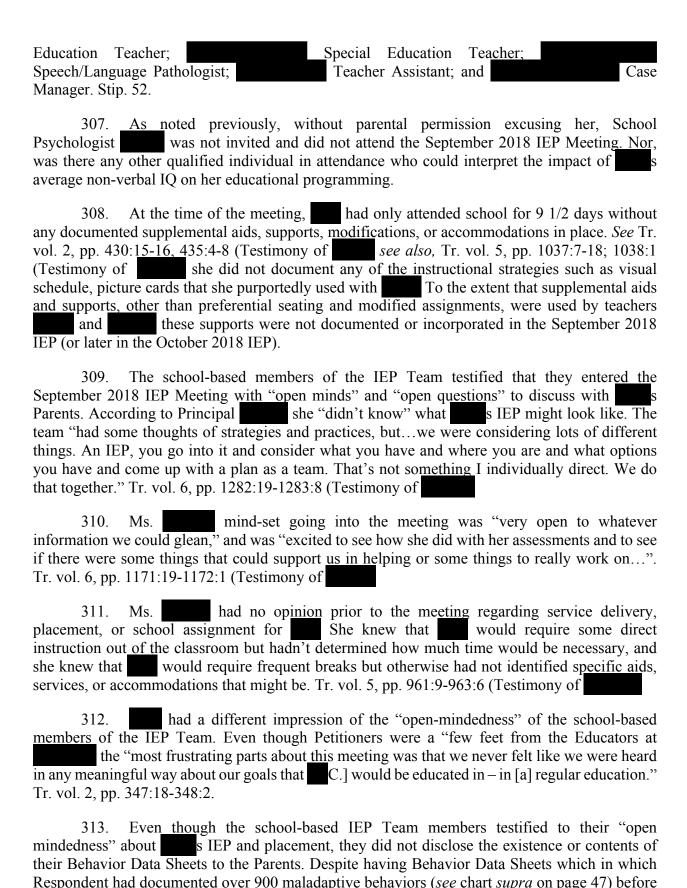
Appears there are two data sheets for September 20 in Ms. Class. *See* Stip. Ex. 38, pp. 213 & 214.



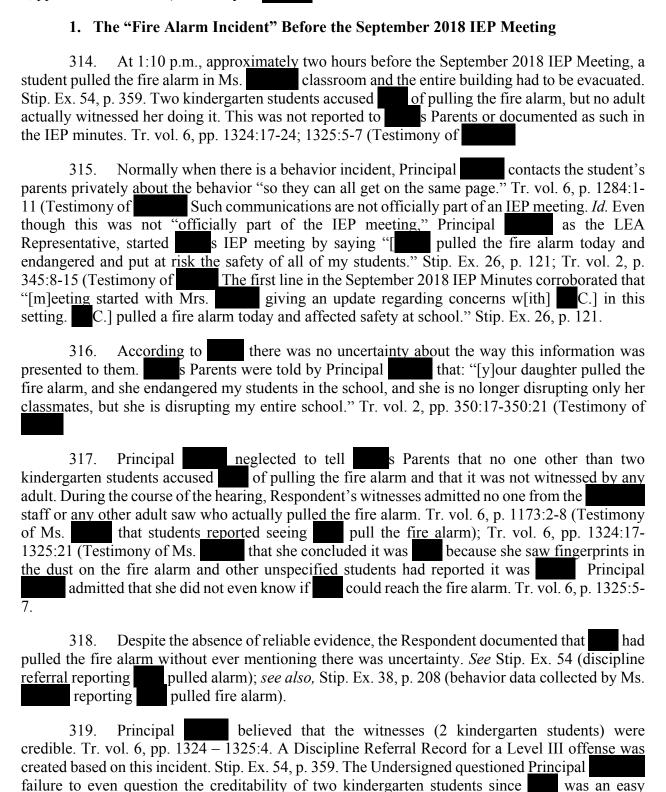


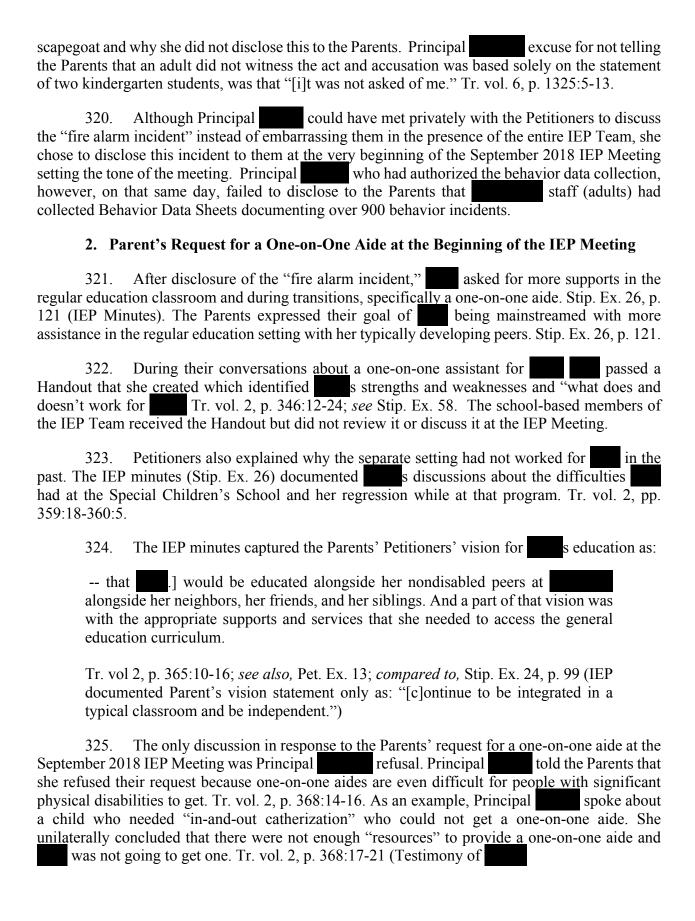
b. Principal
291. Principal observed during the first few weeks of kindergarten and "saw her participating in classat ease and enjoying things." Tr. vol. 6, p. 1281:9-13. Although during that time, needed regular redirection by Ms. (the class TA), "she was happy and participating." Tr. vol. 6, p. 1281:113-15.
292. After the September IEP Meeting where Principal decided that would be placed in special education 300 minutes a day, Principal had regular encounters with during transitions, in the hallways, in the regular and special education classrooms, the cafeteria, and frequently throughout the school. Tr. vol. 6, p.1286:17-23. At those times, Principal observed that "was happy, moving along with her class, participating in playtime like on the playground." Tr. vol. 6, pp. 1286:24-1287:1 Principal noted that "in the cafeteria needed] lots of support from the teachers and on the playground" for safety reasons. Tr. vol. 6, p. 1287:2-3.
293. Principal emphasized that required a "regular rotation of support for her in terms of transitions and activities and class work" not that her behavior was disruptive. Tr. vol. 6, p. 1287:17-19.
c. Dr. – EC Program Director
294. Dr. observed along with other students in Ms. class sometime between the September and October IEP meetings. When she observed in Ms. classroom, was "doing her work" on a literacy activity. Tr. vol. 7, pp. 1405:18-1406.
d. Three Observations by Other School Staff
295. As part of the Eligibility Reevaluation process, was observed three times in her regular classroom by (IF), (EC Case Manager), and Ms. (School Counselor). See Stip. Ex. 55, 56, 57. Each observer completed a Classroom Observation Form which contained a checklist of details about the observation (student observed, learning situation, learning environment) including a checklist of student behavior. One of the student behavior items on this checklist was "disruptive." See Stip. Ex. 55, 56, 57.
296. Details from these observations are also documented in the Summary of Evaluation/Eligibility Worksheet Intellectual Disability ("DEC 3-ID") ("Summary of Evaluation"). Stip. Ex. 23, pp. 90-91. In the Summary of Evaluation, Respondent was selective in its documentation of these observations.
297. The first observation by was on August 31, 2018, during free time in the regular education class and the only behavior Ms. observed was that groups." Stip. Ex. 55. According to Ms. the other children "helped her" and "looked after her." Stip. Ex. 55.
298. Ms. did not check on her observation form that was disruptive. <i>See</i> Stip. Ex. 55.

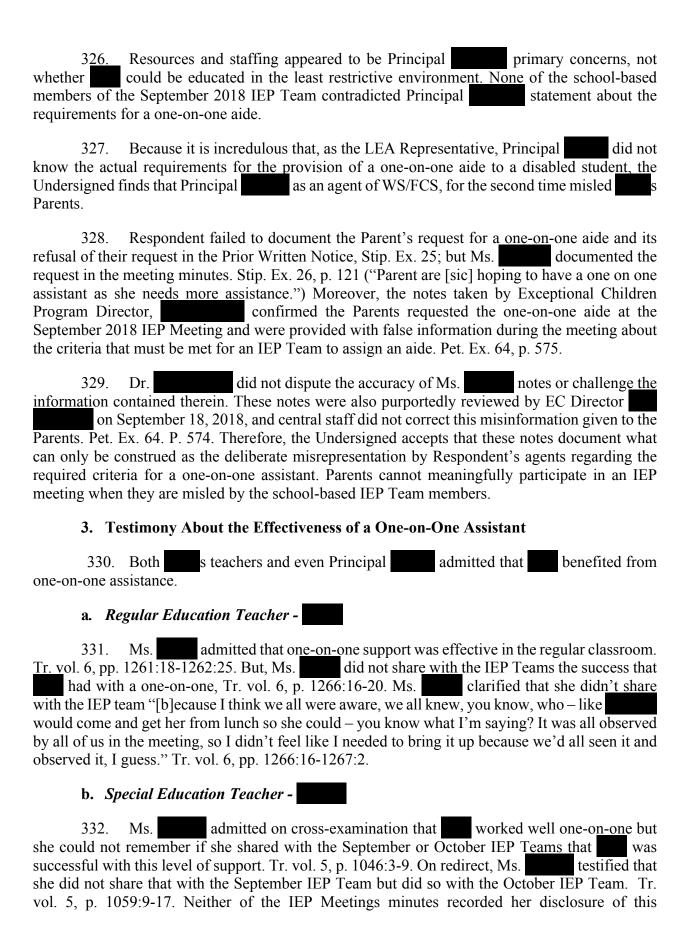




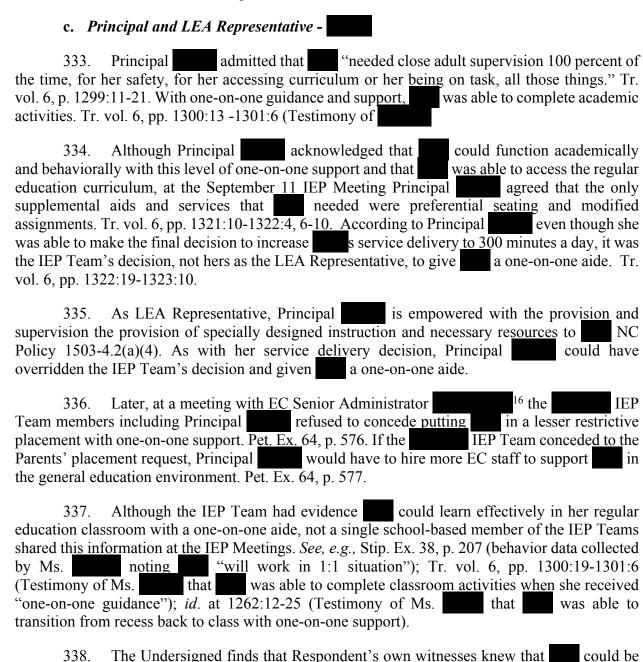
the September 2018 IEP Meeting, the only specific behaviors discussed at the September 2018 IEP Meeting was the "fire alarm incident" and supervision problems on the playground. Tr. vol. 6, pp. 1173:17-1174:6 (Testimony of







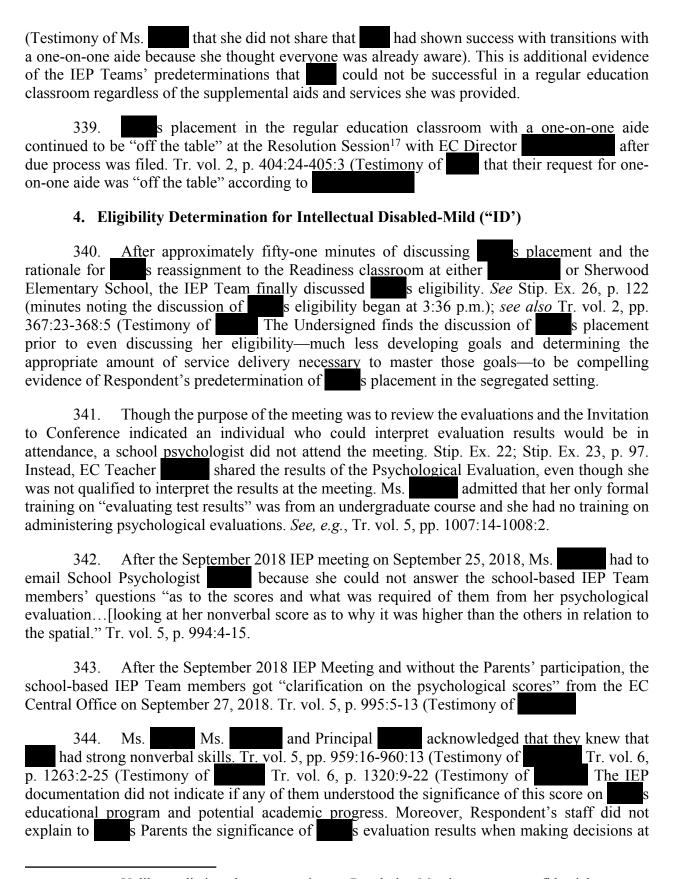
information to either of the IEP Teams. See Stip. Exs. 26 & 31. Moreover, See Stip. Exs. 26 in Moreover, See Stip. Exs. 27 in Moreover, See Stip. Exs. 28 i



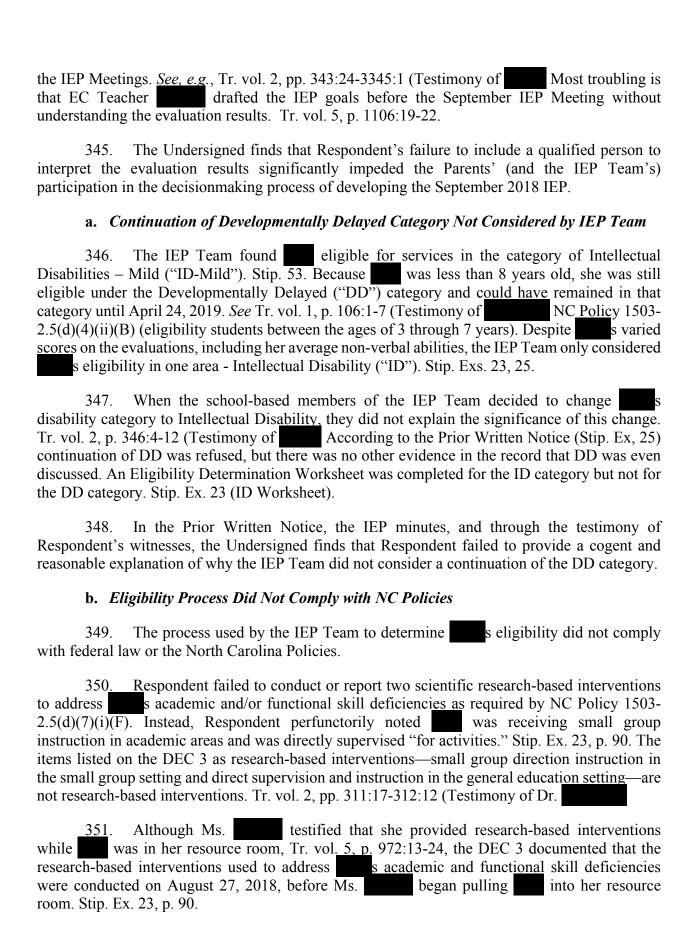
Ms. Ms. although on Respondent's witness list, did not testify at the hearing, however, Principal did not deny the statements in Ms. notes of the meeting. Moreover, the information in this document is not being used to establish the truth of the matter asserted, but instead the intentions and motivation of the school staff during the IEP meetings.

successful when provided one-on-one support; yet, not a single member of the IEP Teams—other

s Parents—discussed including this support in step. Tr. vol. 6, pp. 1266:16-1267:2



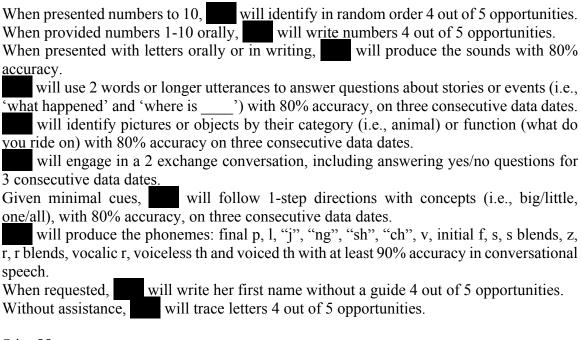
Unlike mediation, the conversations at Resolution Meetings are not confidential.



- 352. As Respondent failed to comply with the procedural requirements to determine eligibility in the category of ID-Mild, and failed to provide any explanation for its decision, the Undersigned finds that the eligibility determination was flawed since it was made without a required IEP Team member who could appropriately interpret the evaluation results and without conducting two research-based interventions.
- 353. Respondent did not provide a cogent and responsive explanation for failing to comply with eligibility procedures for the category of ID-Mild or for not even considering the continuation of Developmental Delay as seligibility category. As has already turned seven and upon turning 8 years old on 2020, she will no longer be eligible under the category of Developmental Delay, when the IEP Team reconvenes to determine her eligibility, they will need to consider all the appropriate categories, not just DD or ID.

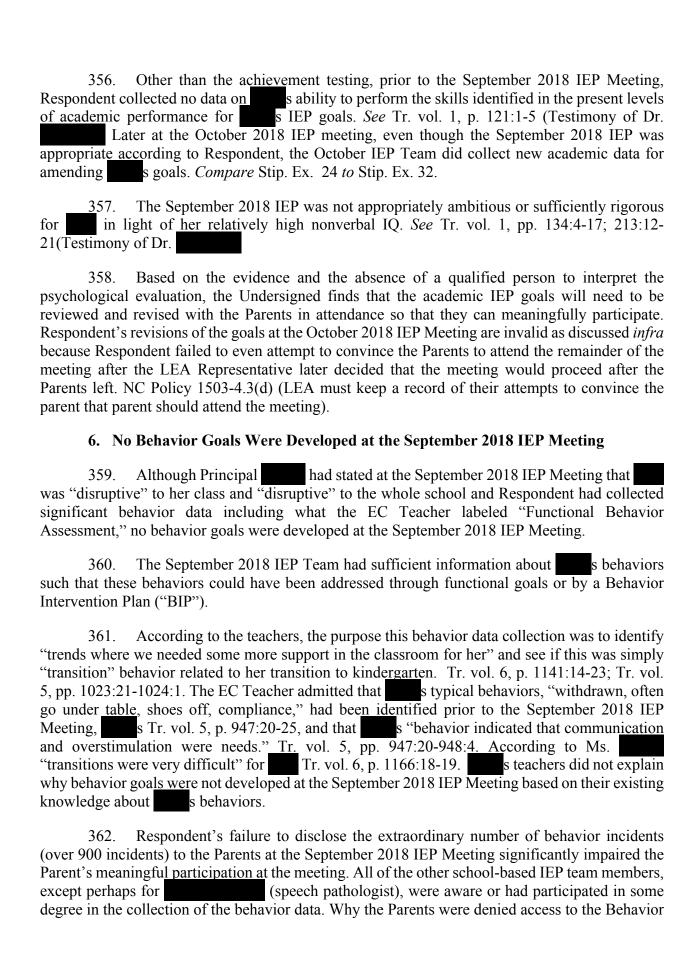
5. IEP Goals in the September 2018 IEP

354. Without understanding the ramifications of some some nonverbal IQ score on her educational programming and academic progress, the September 2018 IEP Team developed the following ten (10) IEP goals:



Stip. 55

355. The specially designed instruction on all ten (10) goals could be provided in the regular education classroom, as goals were aligned with the standard curriculum for kindergarten in North Carolina. Tr. vol. 1, pp. 121:24-128:7 (Testimony of Dr. Tr. vol. 6, p. 1311:22-15 (Testimony of that same skills.).



Data Sheets is unknown. Nevertheless, the Parents were denied access to this significant information and because of this, they could not meaningfully participate in the decisionmaking process at the September 2018 IEP Meeting.

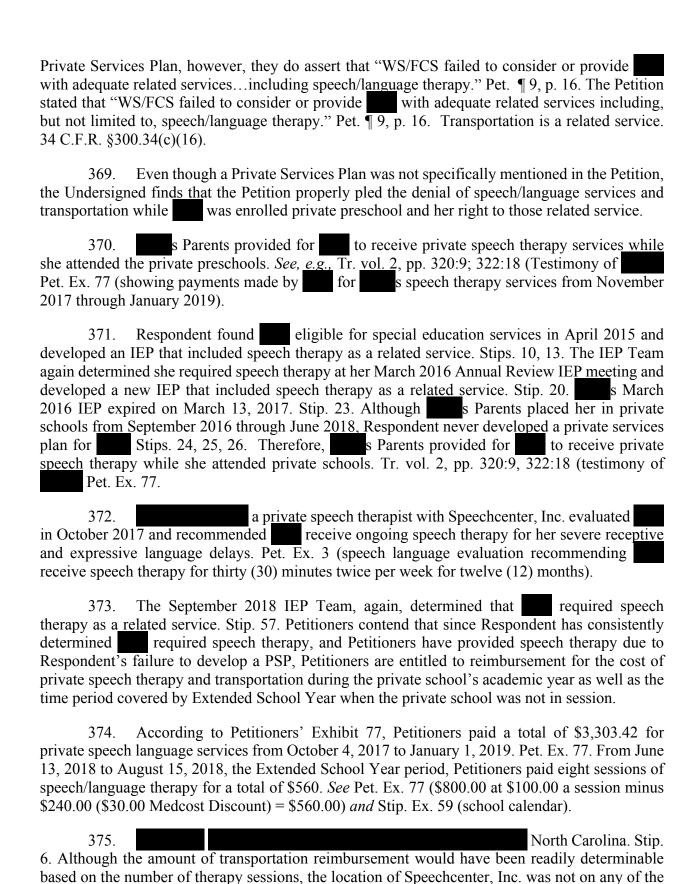
363. Respondent failed to give a cogent and reasonable explanation as to why the behavior data was not disclosed to Petitioners especially after they asked for a FBA. Since the behavior data was not disclosed at the September 2018 IEP Meeting, used to develop functional IEP goals, or used by the IEP Team to determine if semantial semantics maladaptive behaviors were "transitional" behaviors or to "discover trends" in semantics behavior, the only explanation that can be surmised from Respondent's behavior data was that it was improperly used solely to justify sexclusion from the regular education setting.

7. Speech/Language Related Services

364. Petitioners sought reimbursement of their private speech/language therapy but otherwise did not challenge the appropriateness of the speech/language goals or service delivery. Although Petitioners' private speech therapist testified in their case in chief, she was not qualified as an expert witness and did not opine about the appropriateness of the speech/language goals or service delivery of that related service. In fact, Petitioner relied on the speech/language service delivery to justify a PSP and compensatory speech services. Therefore, the Undersigned finds that the speech/language goals and service delivery were appropriate.

8. Private Services Plan ("PSP") for Speech/Language Related Services

- 365. Petitioners asserted that they are entitled to reimbursement of private speech language services pursuant to a Private Services Plan ("PSP") because was entitled to speech/language related services under her 2015, 2016, and September 2018 IEPs. During that entitlement, was enrolled in private schools. Stip. 24. Upon and during her enrollment in private preschool, Respondent failed to find her eligible for a PSP even though so 2015, 2016, 2018 IEPs included speech/language related services for twelve, 30-minute sessions per reporting period as a related service. Stip. Ex. 16. No one from WS/FCS contacted Petitioners about seligibility for a PSP after she left WS/FCS. Tr. vol. 2, p. 32:11-22 (Testimony of
- 366. First, Respondent objected to in Petitioners' claim that was entitled to a PSP because it was not specifically included in the Contested Case Petition. Respondent did not dispute the accuracy of these Petitioners' invoices for speech therapy or the appropriateness of the speech/language services during the hearing. After the supplemental documentation was filed, Respondent did contest the transportation costs because it was not proffered in Petitioners' case in chief.
- 367. In paragraphs 29 and 39 of the Petition, Petitioners stated that they enrolled in a private school during the period she was eligible for special education and related services. Pet. ¶¶ 29, 39; pp. 5 & 6.
- 368. The Petition also stated that "grants continued to provide for her to receive private speech therapy services to address her documented communication needs." Pet. ¶ 40, p. 6. continued to be enrolled in WS/FCS even though her IEP expired in March 2017. Pet. ¶ 46. In Petitioners' Summary of Allegations, Petitioner did not specifically mention the denial of a



admitted exhibits. Speechcenter's address is on Petitioners supplemented exhibits which were not admitted.

- 376. Respondent objected to the inclusion of transportation costs because although Petitioners requested reimbursement of transportation costs in their Petition, they did not proffer evidence on the transportation costs during their case in chief nor was it included in their Proposed Decision. Respondent contends allowing Petitioners to supplement the record is prejudicial to Respondent. Resp. Response p. 6. The Parents' address was a stipulated fact and the number of speech therapy sessions was in the record. If Petitioners had proffered the Speechcenter's address during their case in chief, the transportation expense could have been easily calculated without supplemental documentation but Petitioners did not. Transportation expenses for the private speech therapy sessions will not be awarded, but Respondent will be responsible for Petitioners' transportation expenses for future compensatory speech therapy.
- 377. Respondent also argued that, except for child find, the Undersigned lacked jurisdiction to consider the appropriateness of the services provided under a PSP. Due process procedures do not apply any potential dispute regarding the provision of services pursuant to a Private Services Plan. N.C. Policies 1501-6.11(a) states that except for child find, "due process procedures do not apply to disputes than an LEA has failed to meet the requirements for parentally-placed private school children with disabilities, including the provision of services indicated on the child's services plan." *See also* 34 CFR § 300.140(a). Instead, "[c]omplaints that an LEA has failed to meet the requirements of the parentally-placed private school children with disabilities provisions above must be filed under the procedures of the state complaint process." NC Policies 1501-6.11(b).
- 378. The Undersigned agrees that administrative law judges lack jurisdiction over the services provided pursuant to a PSP. So, while may have been eligible for a PSP, the Undersigned could not adjudicate the appropriateness of the speech/language services in the PSP. Moreover, just because IEPs included the same amount of speech/language services, that does not mean that the PSP would provide the same amount.
- 379. Respondent admitted that currently during the 2018-2019 school year WS/FCS does provide PSPs for speech/language services for students parentally placed in private schools. Tr. vol. 7, p. 1434:13-22 (Testimony of However, Dr. did not know about the prior school years. Tr. vol. 7, pp. 1434:13-1435:3. Petitioners offered no evidence proving that Respondent allocated its PSP resources to speech language therapy during the time they paid for private services.
- 380. The Undersigned finds that Petitioners failed to prove by a preponderance of the evidence that WS/FCS provided speech/language services in Personal Service Plans during the period time for which they seek reimbursement. Moreover, the Undersigned lacks jurisdiction as to the appropriate amount of speech/language services in SPSP. Therefore, Petitioners are not entitled to reimbursement of the speech/language services or transportation for those services during the school year or ESY because they did not meet their burden of proof on the PSP entitlement issue.

9. Entitlement to Private Speech/Language Services as Compensatory Education

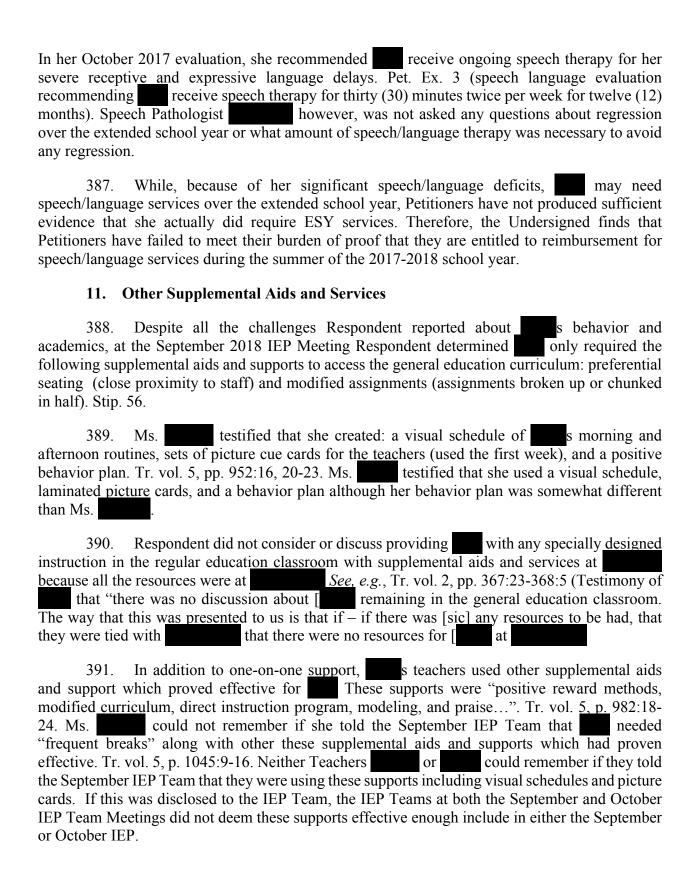
- 381. In the alternative, Petitioners ask for compensatory speech/language services because WS/FCS failed to provide any speech/language services when she reenrolled in WS/FCS. Respondent failed to develop an IEP at the May 2018 IEP Meeting. It is uncontested that the IEPs developed before and after the May 2018 IEP Meeting included the same amount of speech/language related services (12 sessions 30-minutes each reporting period). Excluding the eight sessions during the ESY period, Petitioners paid for fourteen sessions of speech language from May 22, 2018 to January 15, 2019, a total of \$980.00 (\$1400.00 minus Medcost Discount of \$420.00). Pet. Ex. 77 and Stip. Ex. 59.
- 382. Even if the contested IEPs are found appropriate, WS/FCS' complete failure to deliver speech/language services denied a FAPE during the relevant period. As Respondent claims prejudice by the inclusion of the transportation costs and Petitioners appeared to have abandoned this claim during the hearing, the Undersigned will not consider those costs in the reimbursement amount.
- 383. Because the level of speech/language services has been consistent through all s IEPs, Respondent did not develop the IEP at the May 2018 IEP Meeting, and was entitled to speech/language services from May 22, 2018 through the 2018-2019 school year, excluding ESY. As of May 22, 2018, only 3 weeks remained of the fourth quarter. Speech/language services were to be delivered at 12 sessions a quarter and there are 9 weeks in a quarter, Petitioners would be entitled to 3 sessions of speech language for last quarter of the 2017-2018 school year and 48 sessions for the 2018-2019 school year for a total of 51 sessions.
- 384. The Undersigned finds that, as compensatory speech/language services, Respondent is responsible for reimbursing Petitioner the amount of \$980.00 (14 sessions). Of the 51 sessions of speech/language compensatory services, Respondent is also responsible for the provision of 37 compensatory speech/language sessions. The Parties may mutually agree for Respondent to prospectively provide the 37 compensatory speech/language sessions or reimburse Petitioners for 37 sessions previously paid at the \$70.00 rate (\$100.00 30.00 Medcost Discount = \$70.00) for a total of \$2,590.00.¹⁸

10. Extended School Year ("ESY") Speech/Language Services

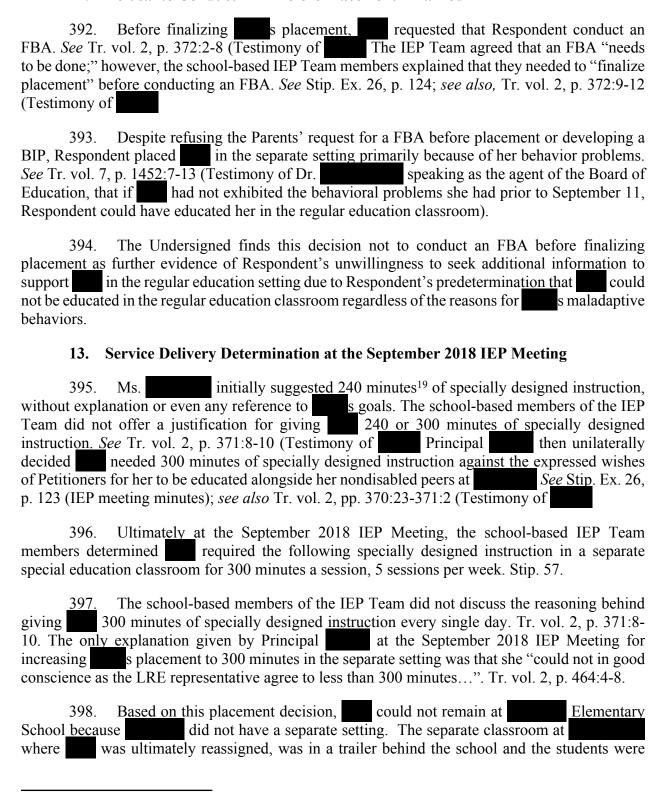
385. Even if _____ was entitled to compensatory related services for the school year that does not mean she is entitled to the same related services during the 2017-2018 extended school year. The May IEP Team did not develop an IEP and therefore did not determine seligibility for Extended School Year ("ESY") services. The September 2018 IEP determined ESY was not needed. Stip. Ex. 24. The October 2018 IEP deferred the ESY determination until May 1, 2020. Stip. Ex. 32, p. 171. Petitioners paid \$800.00 for speech/language services during the ESY period. Pet. Ex. 77.

386. Petitioners' private speech therapist testified that would regress if speech/language was not continued beyond December of 2018. Tr. vol. 2, p. 495:8-12.

A sum total value amount of \$3,570.00 (\$980.00 + \$2,590.00).



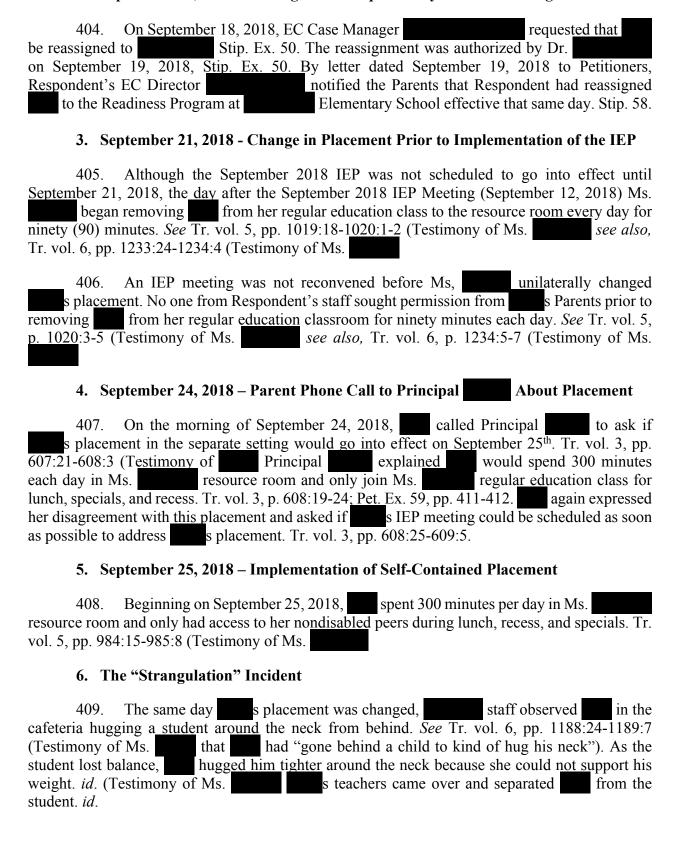
12. Refusal to Conduct FBA Before Placement Finalized

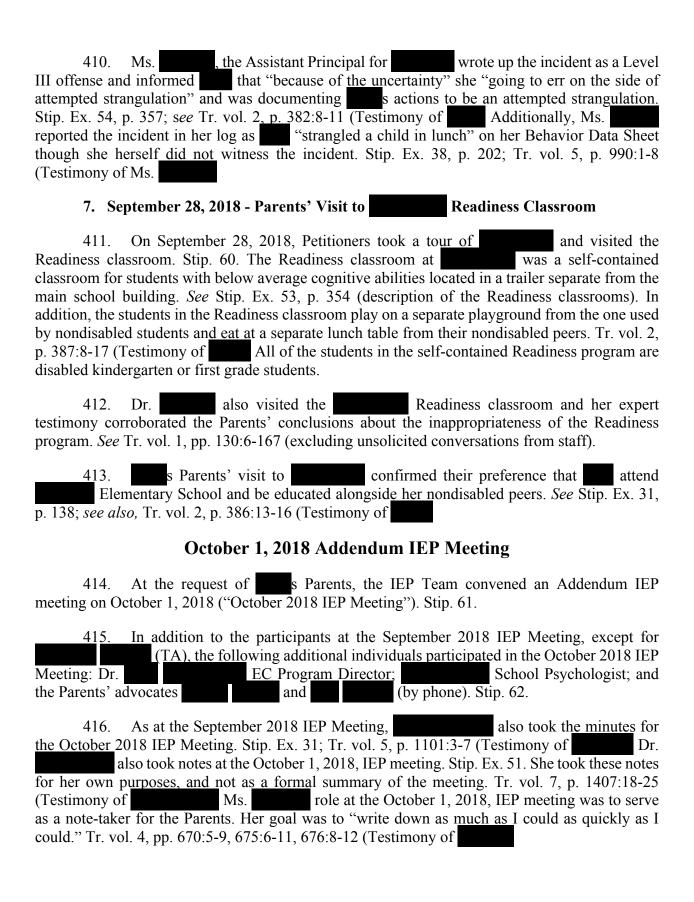


For school aged students: separate placement is 39% or less of the day with nondisabled peers; resource placement is 40%-79% of the day with nondisabled peers; and regular placement is 80% or more of the day with nondisabled peers. *See* Stip. Ex. 24, p. 114.

100% segregated from nondisabled peers even for lunch and recess. Stip. Ex. 53, p. 354 description of the Readiness classrooms); Tr. vol. 2, p. 387:8017 (Testimony of The "good conscience" of the LEA Representative was not a cogent and responsive explanation for Respondent's placement decision. To the contrary, Respondent's explanation only provided further evidence that Respondent's decision to provide with 300 minutes of specially designed instruction every day in the separate setting was not based on needs or even her IEP goals. See, e.g., Tr. vol. 6, p. 1315:4-11 (Testimony of Principal s service delivery time was determined by "what the district requires for the core academic areas"); Tr. vol. 7, p. 1442:13-19 (Testimony of Dr. that "goals are <u>not the only</u> thing you work on in a separate setting."); Tr. vol. 1, p. 133:2-12 (Testimony of Dr. no rationale or justification provided for the service delivery time); id. at 194:1-3 (Testimony of it was inappropriate to provide with 300 minutes of specially designed instruction in the separate setting). Period Between September 12, 2018 – October 1, 2018 1. September 13, 2018 - Parents' Letter Disagreeing with Placement Decision The implementation date for the September 11, 2018 IEP was delayed until September 21, 2018, instead of the original start date of September 12, 2018, to allow the Parents to visit self-contained classrooms in other schools. Stip. 54; Stip. Ex. 21 (date 09/12/2018 crossed off on IEP and 09/21/2018 substituted). On September 13, 2018, s Parents sent a letter to Ms. Principal and EC Director expressing their disagreement with the decision expressing their disagreement with the decision of the school-based members of the September 2018 IEP Team to place in the separate setting, be educated with her nondisabled peers with supplemental aids reiterating their request that and services, and requesting another IEP meeting. See Pet. Ex. 13; see also, Tr. vol. 3, p. 602:23-24. There was a disconnect between Principal recollection of what the Parents wanted at September 2018 IEP Meeting and what the Parents' actually wanted. Principal was "surprised" by this letter and thought the Parents agreed with her placement decision of 300 minutes in the separate setting. Tr. vol. 6, p. 1288:3-7. Ms. was not shocked or "surprised" because she knew that the Parents "didn't want her out of the classroom all day basically ... [b]ecause they had said it at the IEP meeting." Tr. vol. 6, p. <u>1190</u>:10-13. Ms. understood that "[The Parents] wanted a lot of peer modeling for [s] social skills, wanted her goals to be addressed within the classroom, in the regular educational classroom ... I understood their concerns." Tr. vol. 5, pp. 976:13-977:11. It appears that only Principal did not understand the Parents' concerns. The Undersigned finds that, as of the September 2018 IEP Meeting, Respondent knew, or were in denial, about the Parents' desire for to be placed in the regular education classroom with her nondisabled peers, not in a segregated setting.

2. September 18, 2018 - Reassignment Requested by EC Case Manager



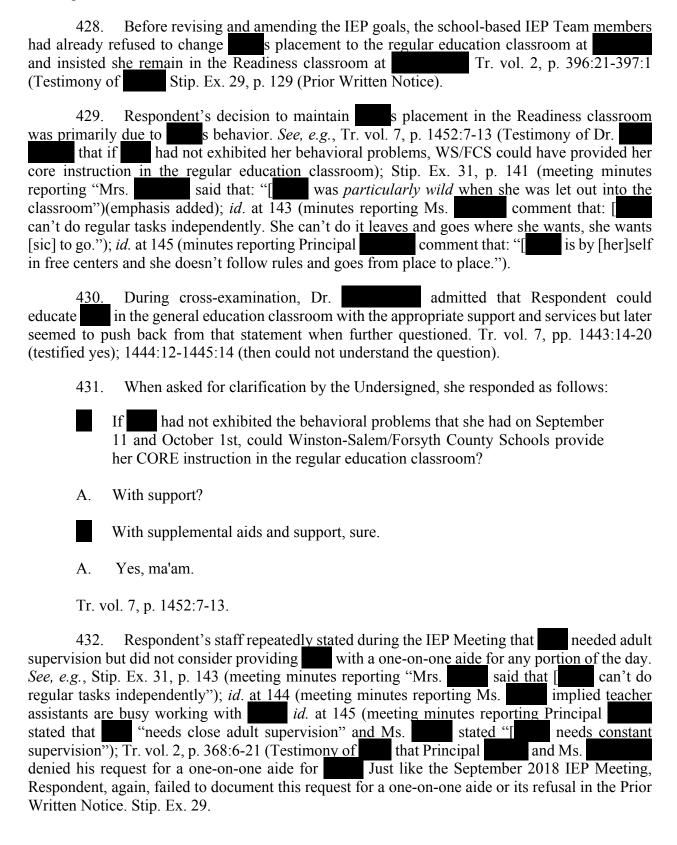


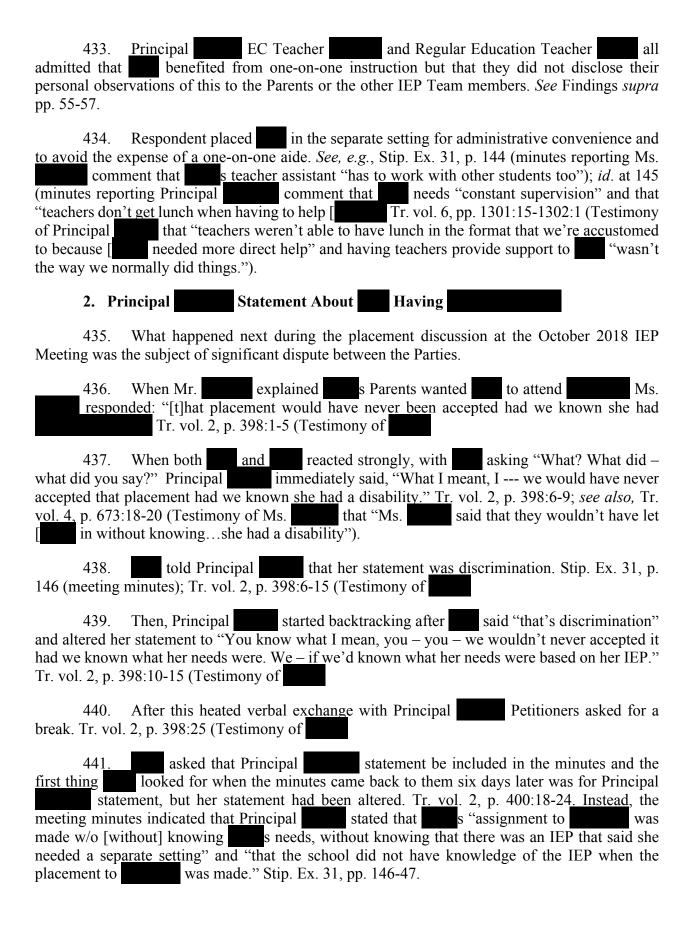
1. The Agenda for the IEP Meeting

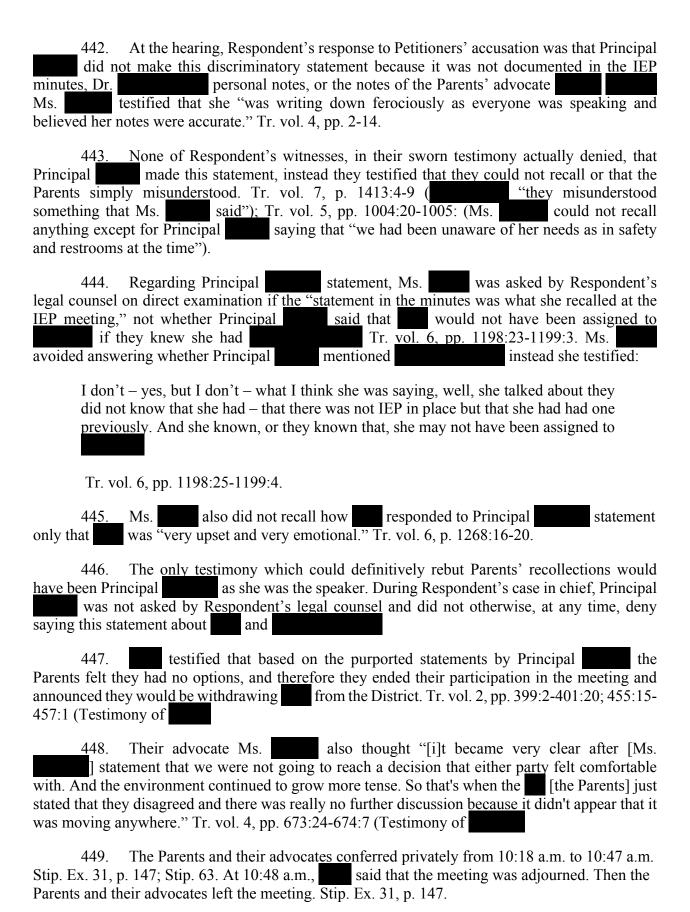
417. Respondent had prepared an agenda for the order of discussion at the October 2018 IEP Meeting as follows:	
 Introduction of team members Explanation of purpose of meeting Parents' concerns S Day Completion of Re-Eval prep to request OT and FBA Addendum of IEP Adjournment 	
Stip. Ex. 27.	
418. According to Principal the agenda was "adjusted" to allow the Parents of discuss their concerns regarding splacement first before reviewing the entirety of the IEI Stip. Ex. 31 at 140; Tr. vol. 6, p. 1298:3-11 (Testimony of The agenda was not "adjusted" The IEP Minutes documented that the IEP Team first discussed items 1 and 2 on the agenda the proceeded to discuss the 3 rd item "Parents' concerns" which as Respondent knew was about placement. Stip. Ex. 31, p. 138. Respondent created an agenda anticipating that placement would be discussed prior to the IEP Team's review of the goals.	P. ." en ut
419. The Parents' highest priority was for "to learn alongside her nondisable peers." Tr. vol. 2, pp. 459:24-460:2. Stated at the meeting that the Parents' main concern was whether "full inclusion for was impossible, a shadow was impossible, aids and services were impossible. If – if – a conversation about inclusion at was impossible, I did want to kno it. It was not – those comments were not acknowledged. There was no discussion that started Tr. vol. 2, pp. 456:8-14, 391:21-392:2 (Testimony of	as re W
420. According to the school-based IEP Team members, Petitioners were unreasonable because they only wanted 100% inclusion. See Stip. Ex. 52, p. 347 (Dr. Petitioners denied that they simply demanded full inclusion instead they wanted "to start the discussion. And it was a discussion that Ms. And). ne
as the highest ranking person in this room, if could be educated alongside her nondisabled peers with appropriate aids and services. Dr. acknowledged this question by answering with another question. "So what you're askin is can your daughter be educated alongside her nondisabled peers with appropriate supports are services?" Tr. vol. 2, p. 366:15-25. When responded affirmatively, Dr. didn answer, and the conversation moved on. Tr. vol. 2, p. 367:1-3.	ıd
Dr. did respond. Dr. admitted that, but for a behaviors, wir appropriate supplemental aids and services she could be educated alongside her nondisabled peer Tr. vol. 7, p. 1452:7-13.	th

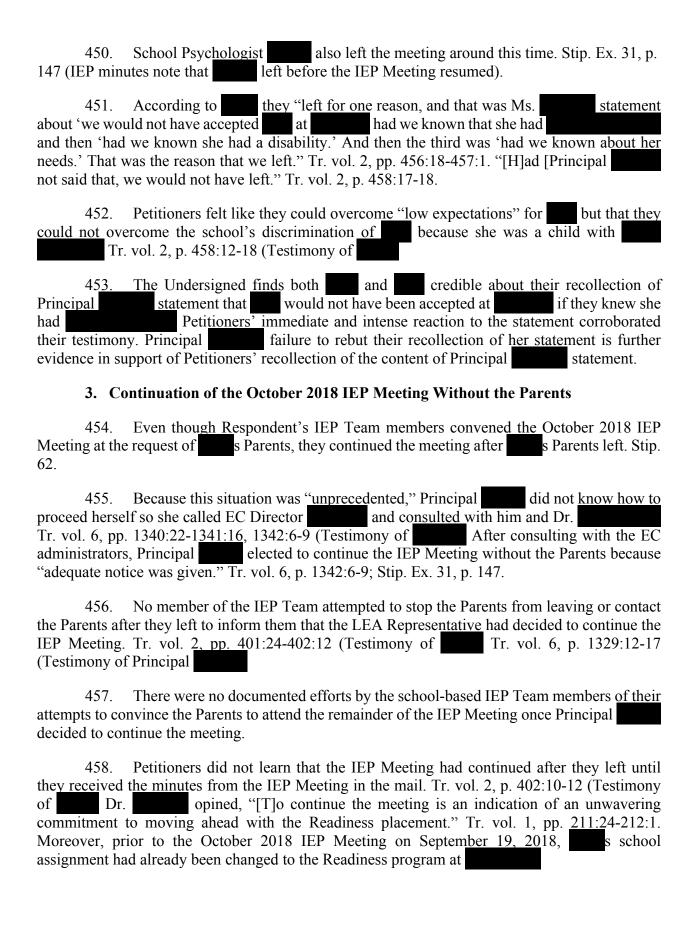
- 423. Even though, Principal and Dr. already knew prior to the October 2018 IEP Meeting that on September 19, 2018 had been reassigned to the Readiness the school-based members of the IEP Team testified that they entered the Program at meeting without any "preconceived notions" of what the IEP would like and hoped the IEP Team would come to a consensus about the appropriate services for Tr. vol. 6, p. 1192:17-21 (she "was open to what the experts [the Parents] were bringing in would say (Testimony of and hopefully come to a good consensus together"); Tr. vol. 6, p. 1297:10-23 (Testimony of ("I didn't really know what [the IEP] would look like at the end. I was hoping that we would find a balance that would make all parties, you know, more at ease with what was being provided and feel good about that. We felt good about what we were providing and were in hopes that, you know, we could see where we had come so far and what adjustments we might make...I didn't have any preconceived notion of what exactly we would come out of there with."); Tr. vol. ("[E]ven though the [Parents'] letter had said, 7, pp. 1406:19-1407:8 (Testimony of to the best of my memory, that it said [the Parents] wanted only full inclusion[,] I believe in the process that you come back to the table and you have a conversation and come to a consensus. So, I was hoping that's what we could do.").
- IEP Meeting was inconsistent with their testimonies. Instead of being "open minded" without any "preconceived notions" as they claimed, the school-based members of the IEP Team did not consider whether could be successful in her regular education classroom with her nondisabled peers. See, e.g., Pet. Ex. 62, p. 567 (notes of Ms. Instead, there were "visible eyerolls, disengagement, etc." in response to questions from Id. The attitude of the school staff was "unwelcoming and fairly hostile," and it was "very clear from the beginning that their minds had already been made up as to what was going to happen in the meeting." Tr. vol. 4, p. 674:18-23 (Testimony of The school-based members of the IEP team ignored as comments at the start of the meeting and did not make eye contact with him. Tr. vol. 2, p. 393:6-16 (Testimony of
- 425. The Parents' advocate Ms. described the attitude of the district staff as "unwelcoming and fairly hostile in a defensive way, very clear from the beginning that their minds had already been made up as to what was going to happen in the meeting, and there was just not much flexibility given or very there was not much openness to the possibility for Tr. vol. 4, p. 674:16-23 (Testimony of
- 426. The Parents and their advocates attempted to engage the school-based members of the IEP Team in a discussion about how could be supported in her regular education classroom. See Stip. Ex. 31, p. 139 (meeting minutes reporting Mr. discussing the evidence that did well in a regular education setting during preschool); id. at 142 (meeting minutes reporting asked for an explanation of why was placed in the Separate setting for 300 minutes per day at the September 2018 IEP Meeting); Pet. Ex. 62, p. 567 (Ms. notes reporting Mr. asked "What can we do to meet [see s needs in gen ed starting tomorrow?").
- 427. The IEP Minutes recorded that the school-based IEP Team members listened to Petitioners and their advocates but did not record the content of any discussions by the IEP Team about how a one-on-one aide could be used for to access the regular education classroom.

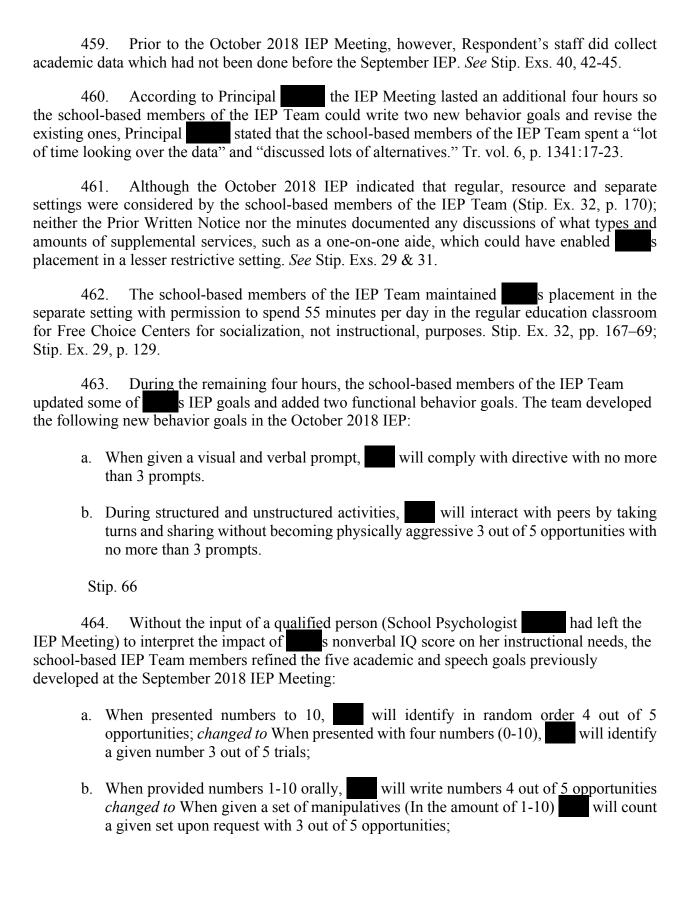
See Stip. Ex. 31.

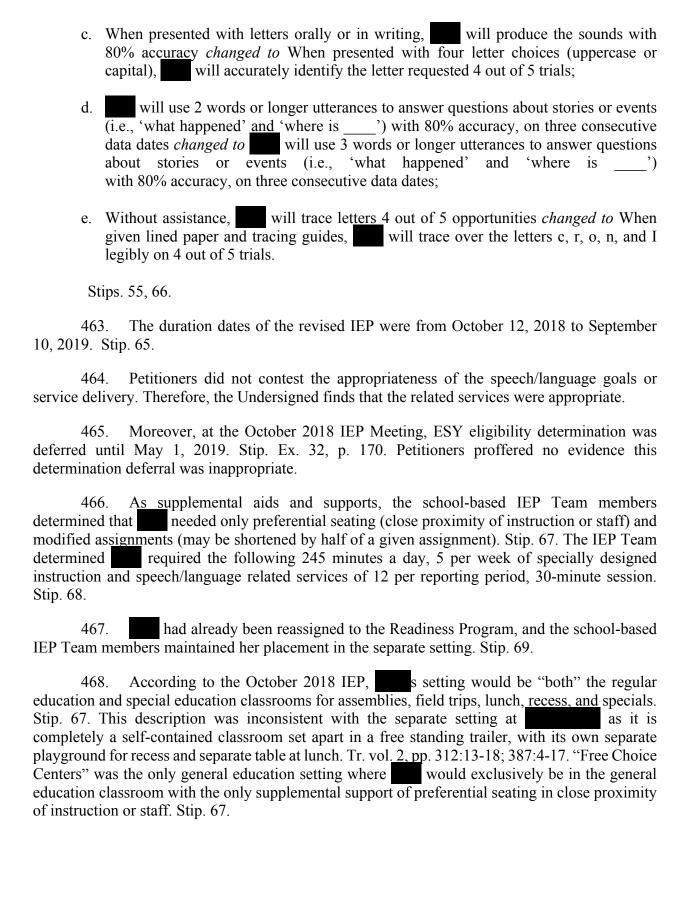


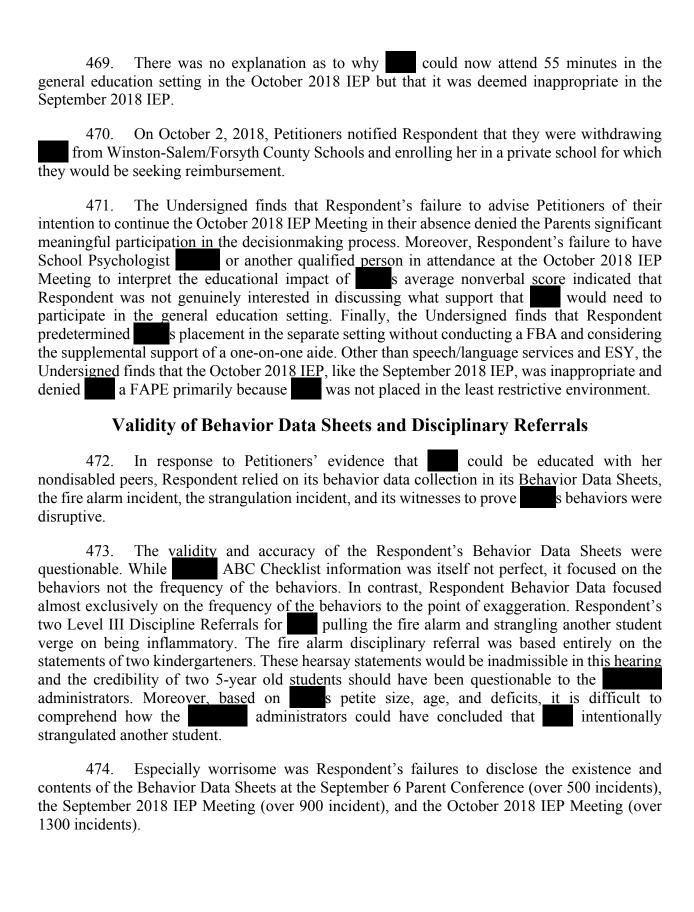




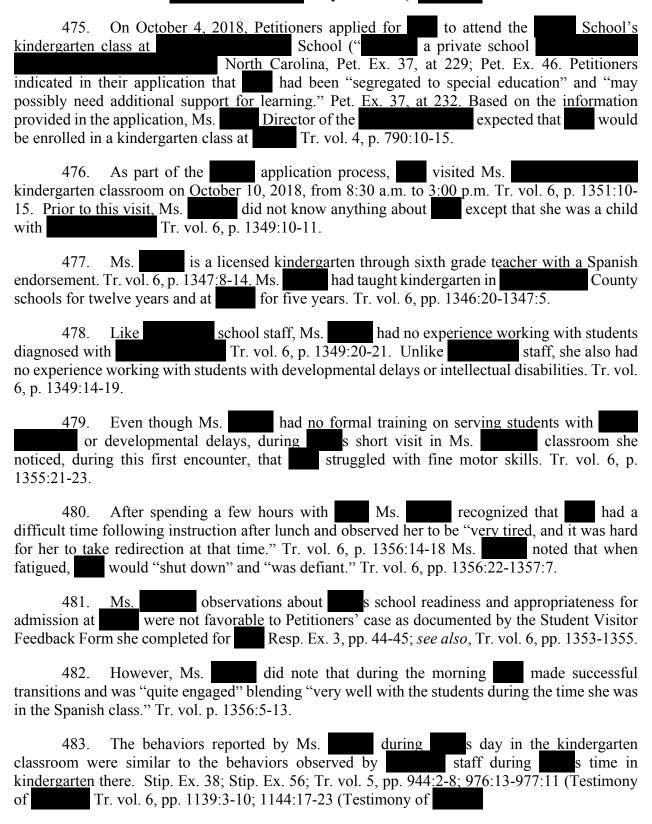


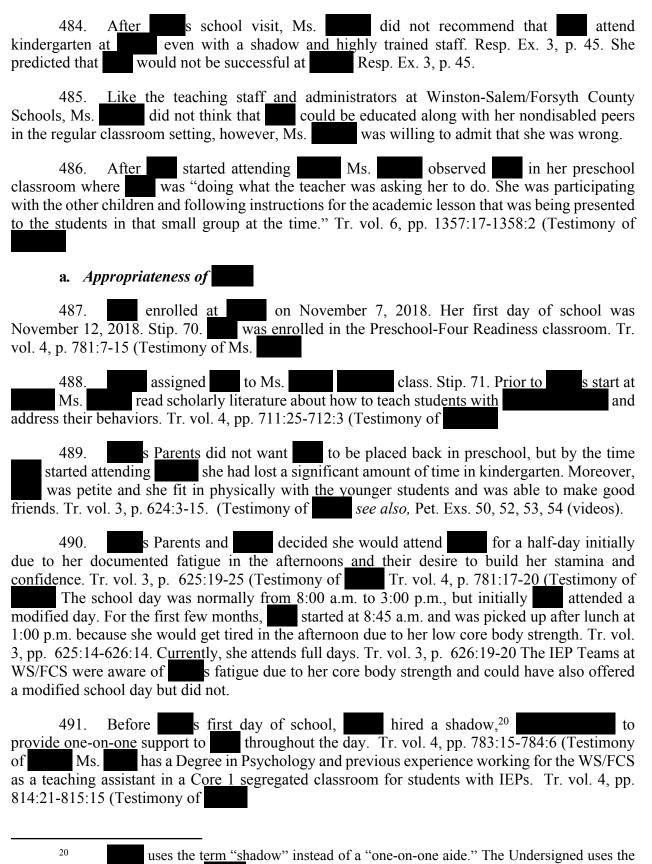




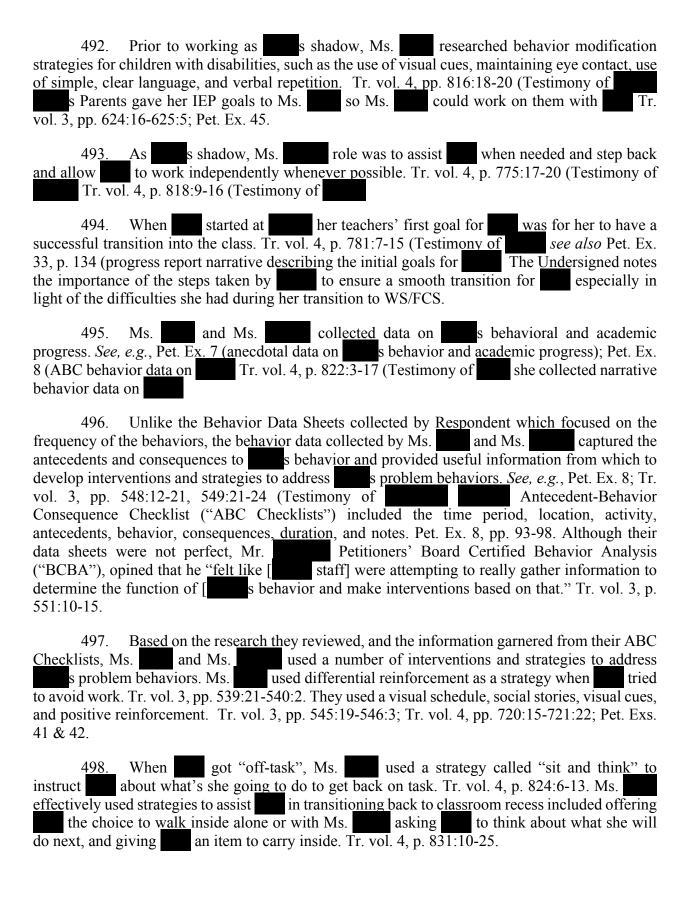


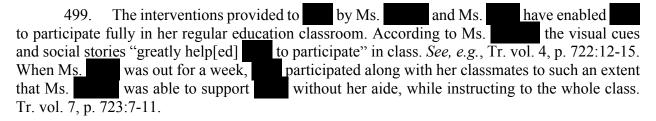
Day School ("





terms interchangeably since Ms. role as a shadow was the same as a one-on-one aide.

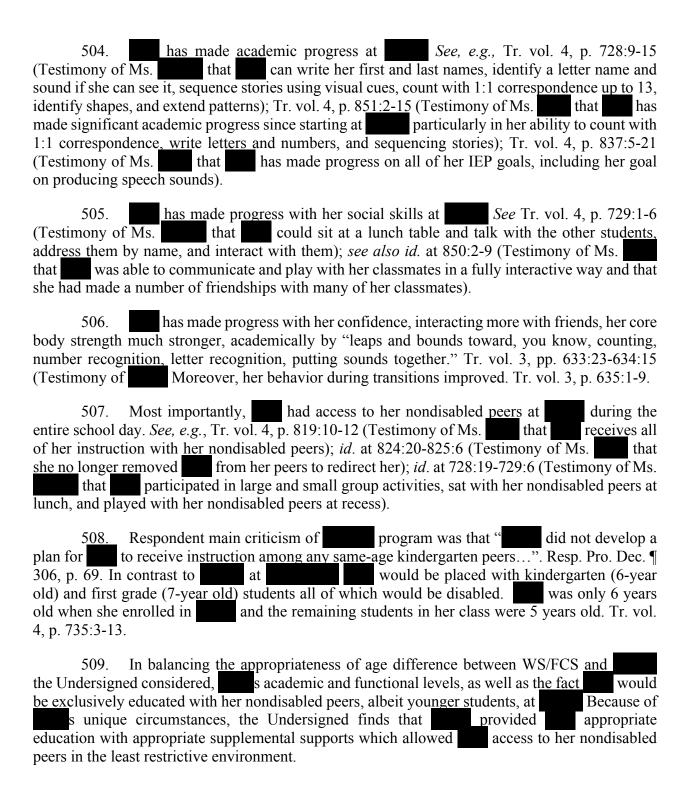




- sunique needs. See, e.g., Tr. vol. 1, p. 188:17-25 (Testimony of Dr. that provided assistive technology in the form of a chair to help her sit up during circle time); Tr. vol. 4, p. 726:19-21 (Testimony of that she provided assistive technology in the form of a chair to help her sit up during circle time); Tr. vol. 4, p. 726:19-21 (Testimony of that she provided assistive technology in the form of a chair to help her sit up during circle time); id. at 727:13-21 (Testimony of that she provided special scissors that are easier for her to use and she used more tactile approaches with when teaching her letters); id. at 828:12-19 (Testimony of that she provided headphones when needed to "help her deal with noise" in the classroom).
- 501. Ms. provided with differentiated instruction. See, e.g., Tr. vol. 4, p. 717:4-10 (Testimony of that when teaching how to "count on," she divided students into groups and gave each group a different activity related to that skill); id. at 731:1-6 (Testimony of Ms. that she sometimes adjusted a lesson to facilitate is ability to access the information); Tr. vol. 1, p. 228:10-15 (Testimony of Dr. that provided differentiated instruction for math). When was learning to identify letters, Ms. would give five letters to choose from rather than all twenty-six so could just focus on five letters at a time. Tr. vol. 4, pp. 829:14-830:3.
- 502. Ms. Ms. and the classroom teaching assistant collaborated in developing strategies to assist See, e.g., Tr. vol. 4, p. 726:1 (Testimony of Ms. that she and Ms. collaborated on a daily basis regarding seducation); id. at 726:4-8 (Testimony of Ms. that she and Ms. discussed how to improve sfine motor skills); id. at 724:8-15 (Testimony of Ms. that she and her assistant met with Ms. prior to semicons semicolliment to discuss the classroom dynamics and how to seamlessly transition and Ms. to the classroom).

b. Behavioral and Academic Progress

503. has made significant behavioral progress at See, e.g., Tr. vol. 4, pp. 726:19-727:5 (Testimony of Ms. that no longer needs to use a chair during circle time and can now sit indefinitely); Tr. vol. 4, p. 728:19-23 (Testimony of Ms. able to participate in small group with minimal redirection and transition between activities with fewer visual cues); id at 730:12-14 (Testimony of Ms. that is able to sit and stay focused during large group activities and can politely ask for help when she needs it); Tr. vol. 4, pp. 825:24-826:6 (Testimony of Ms. that she rarely has tanymore, and she is able to redirect much faster than when that she rarely has to ask to "sit and think" first started at vol. 4, pp. 1357:19-1358:14 (Testimony of Ms. that she had observed in Ms. classroom in the previous month, and was following instructions and participating in the academic lesson).



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CONCLUSIONS OF LAW

Based on the above Findings of Fact and relevant laws and legal precedent, the Undersigned concludes as follows:

General Legal Framework

- 1. To the extent the Findings of Fact contain conclusions of law or the Conclusions of Law are findings of fact, they should be considered without regard to their given labels.
- 2. This Final Decision incorporates and reaffirms the Conclusions of Law contained in the previous Orders entered in this contested case.
- 3. As the party requesting the hearing, the burden of proof lies with Petitioners and the standard of proof is by a preponderance of the evidence. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Stip. 2.
- 4. The Petitioners, by and through her parents, and and Respondent Winston-Salem/Forsyth County Schools Board of Education are properly before this Tribunal, and this Tribunal has personal jurisdiction, Stip. 1, and subject matter jurisdiction over them.
- 5. Respondent is a local education agency ("LEA") receiving funds pursuant to the IDEA, Stip. 5, and is the LEA responsible for providing educational services in Forsyth County, North Carolina. Respondent is subject to the provisions of applicable federal and state laws and regulations, specifically 20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300 et seq.; and N.C. Gen. Stat. 115C-106 et seq. Respondent is also subject to the *Policies Governing Services for Children with Disabilities* developed by the North Carolina Department of Public Instruction. These acts, regulations, and policies require Respondent to provide FAPE for those children in need of special education residing within its jurisdiction.
- 6. The Petitioners and Respondent named in this action are correctly designated and had been properly noticed of this hearing, Tr. vol. 1, pp. 8:22-9:10, and venue was proper.
- 7. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to Chapters 115C and 150B of the North Carolina General Statutes and the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* and its implementing regulations, 34 C.F.R. §§ 300 and 301. N.C. Gen. Stat. § 115C-109.6(a) controls the issues to be reviewed. Stip. 3.
- 8. The IDEA is the federal statute governing the education of students with disabilities. The federal regulations promulgated under the IDEA are codified at 34 C.F.R. Parts 300 and 301. Stip. 4.
- 9. The controlling State law for students with disabilities is N.C. Gen. Stat. § 115C, Article 9 and the corresponding State regulations. Stip. 6.

- 10. Under the IDEA, a state is eligible for federal funding if it "provides assurances" to the federal government that it "has in effect policies and procedures that ensure," *inter alia*, "a free appropriate public education ("FAPE") is available to all children with disabilities residing in the state." 20 U.S.C. § 1412. A Local Educational Agency ("LEA") is also "eligible for assistance" if its plan to effect policies and procedures is "consisten[t] with the state." 20 U.S.C. § 1415(a)(1).
- 11. The professional judgment of teachers and other school staff is a critical factor in the evaluation of an IEP. "Local educators deserve latitude in determining the individualized education program most appropriate for a disabled child. The IDEA does not deprive these educators of the right to apply their professional judgment." *Hartmann by Hartmann v. Loudoun Cty. Bd. Of Educ.*, 118 F.3d 996, 1001 (4th Cir. 1997); *see also, Bd. of Ed. of Hendrick Hudson Central School Dist., Weschester Cty. v. Rowley*, 458 U.S.176, 189-90 (1982), (stating that "courts must be careful to avoid imposing their view of preferable educational methods upon the States."). The IDEA "requires great deference to the views of the school system rather than those of even the most well-meaning parents." *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 328 (4th Cir. 2004).
- 12. In accordance with N.C. Gen. Stat. § 150B-34(a) the Undersigned "shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to inferences within the specialized knowledge of the agency." A local board of education is a local educational agency under the IDEA and State law. The Office of Administrative Hearings ("OAH"), OAH has subject matter jurisdiction over this case and the actions of local boards of education as local educational agencies in the special education context pursuant to N.C.G.S. § 115C-109.6.
- 13. Deference to educator's professional judgment is due only as long as educators "offer a cogent and responsive" explanation for their decisions at some point during the administrative process. See Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1, 137 S. Ct. 988, 999, 1002 (2017). "We have always been, and we should continue to be, reluctant to second-guess professional educators... [o]nce a procedurally proper IEP has been formulated, a reviewing court should be reluctant indeed to second-guess the judgment of education professionals. Indeed, we should not disturb an IEP simply because we disagree with its content, and we are obliged to defer to educators' decisions as long as an IEP provided the child the basic floor of opportunity that access to special education and related services provides." MM ex rel. DM v. Sch. Dist. of Greenville Cnty., 303 F.3d 523, 527 (4th Cir. 2002) (internal quotations omitted).

Denial of a Free and Appropriate Public Education ("FAPE")

14. A school district is required to offer each student with a disability a FAPE through an Individualized Education Program ("IEP") that conforms to the requirements of the IDEA and State standards. 20 U.S.C. § 1412(a)(1)(A); 20 U.S.C. § 1401(9). The IEP is "the centerpiece of the statute's education delivery system for disabled children." *Honig v. Doe*, 484 U.S. 305, 311 (1988).

- 15. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017); *R.F. by and through E.F. v. Cecil County Public Schools*, 919 F.3d 237 (2019) (clarifying the Fourth Circuit's prior *de minimis* standard no longer good law).
- 16. The focus on the particular child's unique circumstances is "at the core of the IDEA" and the Undersigned's analysis must be grounded in the sparticular circumstances at the time of the IEP Meetings. *Id. citing Endrew F.*, 137 S.Ct. at 999.
- 17. For a reviewing court, "the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Endrew F.*, 137 S.C. at 999. Thus, school districts are not charged with providing the best program, but only a program that is designed to provide the child with an opportunity for a free appropriate public education. *Bd. of Ed. of Hendrick Hudson Central School Dist., Weschester Cty. v. Rowley*, 458 U.S.176, 189-90 (1982).
- 18. Once a school has formulated a procedurally proper IEP, a reviewing court should be reluctant to second-guess the judgment of educational professionals, and neither parents nor courts have a right to compel a school district to employ a specific methodology in educating a student. *See Rowley*, 458 U.S. at 206-08.
- 19. A hearing officer may find a denial of FAPE where the public agency's procedural inadequacies: (1) impeded the child's right to a free appropriate public education; (2) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or (3) caused a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii).
- 20. The Supreme Court held in *the Board of Education of Hendrick Hudson Central School District, Westchester County v. Rowley* that "a court's inquiry" first requires the determination of whether the "[LEA] complied with the procedures set forth in the [IDEA], [a]nd second," whether the "[IEP] developed through the [IDEA's] procedures [is] reasonably calculated to enable the child to receive educational benefits." 458 U.S. 176, 206–07 (1982).

Procedural Violations - Legal Standard

21. The IDEA contains a number of critical, procedural safeguards to provide notice to parents of decisions regarding their children and "an opportunity [for parents] to object to those decisions." *G. ex rel. R.G. v. Fort Bragg Dependent Sch.*, 343 F.3d 295, 299 (4th Cir. 2003) (quoting *MM ex rel. DM v. Sch. Dist. of Greenville Cnty.*, 303 F.3d 523, 527 (4th Cir. 2002) (internal citation omitted)). Should the LEA fail in its obligations under the IDEA, parents are afforded the right to file a due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6).

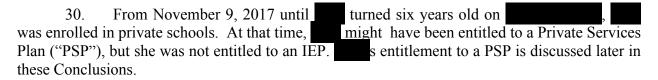
- 22. "The grammatical structure of IDEA's purpose of protecting 'the rights of children with disabilities and parents of such children,' § 1400(d)(1)(B), would make no sense unless 'rights' refers to the parents' rights as well as the child's. Other provisions confirm this view. *See, e.g.*, § 1415(a)." *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 517 (2007). The Court found: "IDEA grants parents independent, enforceable rights. These rights, which are not limited to certain procedural and reimbursement-related matters, encompass the entitlement to a free appropriate public education for the parents' child." *Id.* at 533 (emphasis added).
- 23. The IDEA's procedural requirements are purposefully designed to ensure that parents can meaningfully participate in the process of developing an IEP for their child. *See Rowley*, 458 U.S. at 205–06 ("It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.").
- 24. "[A]n ALJ must answer each of the following in the affirmative to find that a procedural violation of the parental rights provisions of the IDEA constitutes a violation of the IDEA: (1) whether the plaintiffs alleged a procedural violation; (2) whether that violation significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a FAPE to the parents' child; and (3) whether the child did not receive a FAPE as a result." *R.F.*, 919 F. 3d at 249.
- 25. To the extent that the procedural violations do not actually interfere with the provision of FAPE, these violations are not sufficient to support a finding that a district failed to provide a FAPE. *Gadsby v. Grasmick*, 109 F.3d 940, 956 (4th Cir. 1997). If a disabled child received (or was offered) a FAPE in spite of a technical violation of the IDEA, the school district has fulfilled its statutory obligations. *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir.1990).
- 26. Only when the court finds that the "procedural violation has resulted in such substantive harm, and thus constituted a denial of [the child's] right to a FAPE, may [it] 'grant such relief as the court determines is appropriate." *Knable ex rel. Knable v. Bexley City School. Dist.*, 238 F.3d 755, 764 (6th Cir., 2001) (citing 20 U.S.C. § 1415(e)(2)).
- 27. In addition, State law dictates that "the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education." N.C.G.S. § 115C-109.6(f). "In matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies (i) impeded the child's right to a free appropriate public education; (ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (iii) caused a deprivation of educational benefits." N.C.G.S. § 115C-109.8(a).
- 28. Respondent committed numerous procedural violations in this case which caused substantive harm to and significantly impeded her Parents ability to meaningfully participate in the decisionmaking process for developing her educational program.

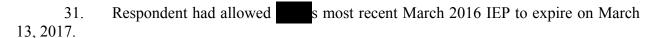
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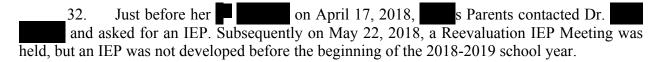
Whether Respondent failed to comply with the procedural and/or substantive requirements of the IDEA at any time between November 9, 2017 through November 9, 2018, and if so, what appropriate relief should this Tribunal award Petitioners?

29. The first issue is whether Respondent violated the substantive and procedural requirements of the IDEA between November 9, 2017 though November 9, 2018 and if so, what the appropriate remedy would be.

1. Respondent Failed to Develop an IEP Before the Beginning of the 2018-2019 School Year







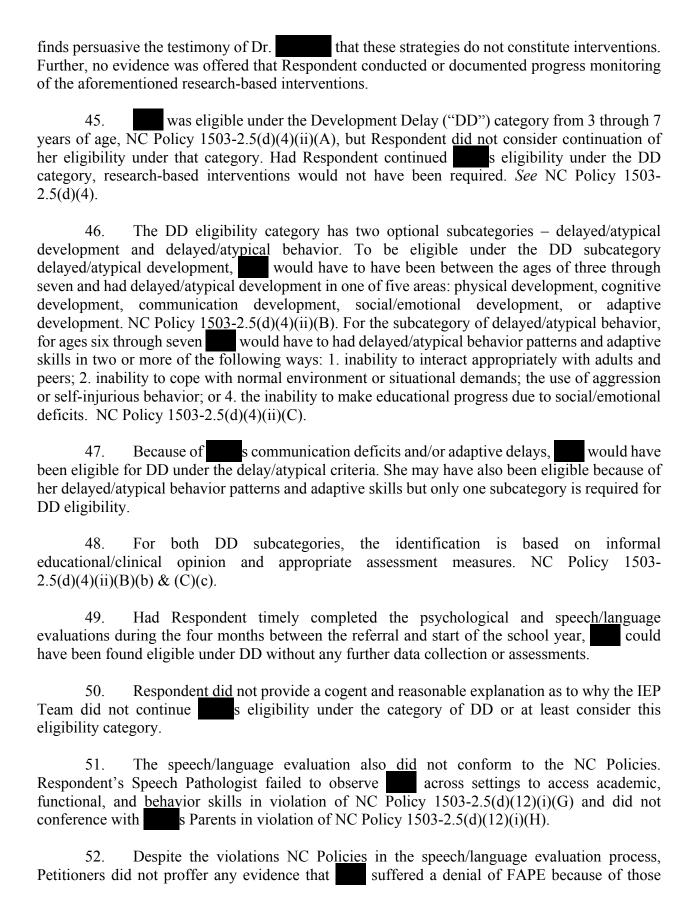
- 33. "At the beginning of each school year, each local educational agency . . . shall have in effect, for each child with a disability in the agency's jurisdiction, an individual education program . . ." 20 U.S.C. § 1414(d)(2)(A); 34 CFR § 300.3232(a); NC Policy 1503-4.4(a).
- 34. For an initial referral, the evaluation process and development of the IEP must occur within 90 days of the referral. 34 C.F.R. § 300.323; NC 1503-4.4(c)(1). So Parents requested that Respondent develop an IEP for so on April 17, 2018. Respondent had ninety (90) days (i.e., July 16, 2018) to complete so evaluations, determine her eligibility, and develop her IEP. Respondent did not even attempt to complete so evaluations until after the 2018-2019 school year started and did not determine her eligibility or develop her IEP until September 11, 2018.
- 35. Consequently, did not have an IEP in place when the school year started, and she did not receive the appropriate supplemental aids and services to allow her to access the general education curriculum.
- 36. In its documentation, Respondent treated the Parent Referral as a Reevaluation instead of an Initial Evaluation thereby avoiding the 90-day timeframe. The Parties also stipulated that the May 22, 2018 IEP Meeting was a Reevaluation IEP Meeting. Stip. 28. As the Parties

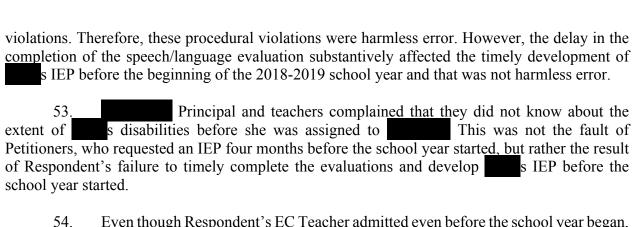
stipulated that the May 2018 IEP Meeting was a reevaluation IEP meeting, Stip. 28, the Undersigned must accept that this was a reevaluation not an initial evaluation, so the 90-day timeframe is not applicable. Even though Respondent was not bound by the 90-day deadline, because of the Parties stipulation that the May 22, 2018 IEP Meeting was a reevaluation meeting, Respondent was not relieved of liability as the IDEA required Respondent to develop an IEP for before the 2018-2019 school year began.

37. Whether this was an initial referral or a reevaluation, Respondent's procedural violations of failing to timely complete evaluations and develop an IEP for before the beginning of the school year caused educational harm. was deprived of any academic or functional support in the regular education classroom. This deprivation contributed to her maladaptive behaviors which Respondent ultimately used to justify her placement in a placement which was not least restrictive for her. This procedural violation was not harmless error and led to a denial of FAPE for

2. Respondent Failed to Properly Evaluate

- 38. The IDEA mandates the initial evaluation to determine if a child is a child with a disability "must consist of procedures—(I) to determine if the child is a child with a disability . .; and (II) to determine the educational needs of the child." 20 U.S.C. \$ 1414(a)(1)(C)(i); 34 C.F.R. \$ 300.301; NC Policy 1503-2.2.
- 39. "Evaluations must be conducted, eligibility determined, and for an eligible child, the IEP developed, and placement completed within 90 days of receipt of a written referral." 20 U.S.C. § 1414(a); 13 C.F.R. § 300.301; NC Policy 1503-2.2(c)(1).
- 40. The evaluation must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the disability category in which the child has been identified. 20 U.S.C. §§ 1414(b)(1)-(3), 1412(a)(6)(B); 34 CFR § 300.304; NC Policy 1503-2.5.
- 41. The evaluation must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information." 20 U.S.C. § 1414(b); 34 CFR § 300.304; NC Policy 1503-2.5.
- 42. Prior to finding a child eligible in the category of Intellectual Disability ("ID"), school districts must conduct, among other things, "two scientific research-based interventions to address academic and/or functional skill deficiencies and documentation of the results of the interventions, including progress monitoring documentation;" an interview with the parents; and a social/developmental history. NC Policy 1503-2.5(7)(i).
- 43. Respondent did not conduct two research-based interventions prior to determine s eligibility as ID-Mild.
- 44. Respondent argued it provided with "small-group instruction" and "direct instruction...for activities," and these constitute research-based interventions. The Undersigned





- 54. Even though Respondent's EC Teacher admitted even before the school year began, she needed information to determine if continued to have previously identified behaviors, Respondent failed to conduct an informal Functional Behavior Assessment ("FBA"). The EC Teacher did use "Functional Behavior Assessment" data sheets and created other "Event Recording Data Sheets" for the regular education teacher, but Respondent denied this data was part of a FBA.
- 56. Although FBA are typically completed after manifestation determinations, 34 C.F.R. § 300.530 (e), nothing precludes the use of a FBA in other contexts when behavior is at issue especially in a situation such as this one where placement was determined based on behaviors.
- 57. Moreover, after the Parents requested a FBA at the September 2018 IEP Meeting, the IEP Team admitted that a FBA was necessary yet delayed conducting the FBA until after the placement determination.
- Although s IEP Team agreed at the September 2018 IEP Meeting that a FBA was needed, Respondent failed to seek her Parents' consent to conduct the FBA prior to removing from her nondisabled peers reportedly due to her behavior. This resulted in educational harm to as Respondent did not understand the function of s behaviors or attempt to implement any BIP prior to segregating her from her nondisabled peers in a separate setting.
- 59. The October 2018 IEP Team agreed that a FBA was needed but again refused to conduct one before the placement determination.
- 60. Respondent's refusal to conduct a FBA prior to its placement decisions at both the September and October IEP Meetings substantively impeded the Parents' right to meaningful participation at both meetings and denied essential information from the Parents as well as all the other IEP Team members.

- 61. For determining eligibility and educational needs, all information obtained during the evaluation process must be documented and carefully considered by the IEP Team. 34 C.F.R. § 300.306(c)(ii). As part of any reevaluation, the IEP Team must review existing evaluation data including classroom-based observations and observations by teachers. 34 C.F.R. § (a)(1)(ii)&(iii).
- 62. Respondent's deliberately failed to disclose its informal behavior data collection and the enormity of such such significantly impeded the Parents meaningful participation in the IEP decisionmaking process. Respondent has offered no explanation, cogent or otherwise, as to why these Behavior Data Sheets were not disclosed to Petitioners until after due process was filed.
- 63. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, except as noted about the speech/language evaluation, the Undersigned concludes that Respondent failed to timely and properly evaluate in accordance with the IDEA and this was not harmless error. Moreover, Respondent's failure to timely develop an IEP before the beginning of 2018-2019 school year denied a FAPE.

3. Failure to Give Appropriate Notice Prior to the May 22, 2018 IEP Meeting

- 64. Each LEA must ensure that one or both of a child's parents are at each IEP Meeting or an opportunity to participate. 34 C.F.R. § 300.322(a); 20 U.S.C. § 1414(d)(1)(B)(i); NC Policy 1503-4.3(a)&(b).
- Respondent presented the Invitation to Conference to s Father to sign at the impromptu May 22, 2018 IEP Meeting, thus failing to provide s Parents with appropriate notice of this IEP meeting. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.322(1); NC Policy 1503-4.3(a)(1).
- 66. Even though the notice was not sufficient to allow an opportunity to attend the May 2018 IEP Meeting, was able to attend and given an opportunity to participate. Petitioner failed to prove that this procedural violation denied a FAPE. This notice violation was harmless error.

4. Entitlement to Extended School Year Services ("ESY")

- 64. Extended School Year ("ESY") services "must be provided only if a child's IEP Team determines, on an individual basis...that the services are necessary for the provision of FAPE to the child." 34 C.F.R. § 300.106(a)(2).
- 65. Under the North Carolina Policies, the IEP Team must determine that extended school year services are necessary for the provision of FAPE to an individual child by considering:
 - (i) Whether the student regresses or may regress during extended breaks from instruction and cannot relearn the lost skills within a reasonable time; or

- (ii) Whether the benefits a student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during extended breaks from instruction; or
- (iii) Whether the student is demonstrating emerging critical skill acquisition ("window of opportunity") that will be lost without the provision of an educational program during extended breaks from instruction.

N.C. Policies 101-2.4(b)(2).

66. Petitioners presented no evidence at the hearing to show that met any of the three criteria for ESY, their post-hearing Brief on ESY likewise contained no evidence to establish entitlement to ESY. Therefore, the Undersigned concludes that Petitioners failed to meet their burden of proof with respect to reimbursement for ESY speech/language therapy.

5. Unauthorized Removal from Regular Education Classroom

- 67. The LEA must ensure that the parents participate in determining the educational placement of a child with a disability. 20 U.S.C § 1414(e); 34 C.F.R. § 300.116; NC Policy 1501-3.3(a)(1).
- 68. On sees second day of school, prior to the development of sees IEP Respondent began removing from her nondisabled peers for thirty (30) minutes each day without informing or obtaining permission from sees Parents. After sees IEP was developed on September 11, 2018, the next day Respondent removed from her nondisabled peers for ninety (90) minutes per day without informing or obtaining permission from sees Parents.
- 69. If the IEP developed at the September 2018 IEP Meeting was not an initial IEP but a continuation of an "expired" IEP as Respondent appears to claim, then Respondent had unilaterally changed splacement 30 minutes in the resource room three weeks before the September 2018 IEP Meeting without reconvening the IEP Team with her Parents' participation. Even though, services were offered in the resource classroom, based on this amount of time was still placed in a regular education placement.
- 70. A change in placement without proper notice is a procedural violation. *R.F.*, 919 F.3d at 246. However, Petitioners failed to show how this procedural violation denied a FAPE because despite this 30-minute removal, was still placed in the regular education setting.
- 71. After the September 2018 IEP was developed and before its implementation date, Respondent unilaterally changed splacement for 90 minutes a day in the resource room, again without reconvening the IEP Team.
- 72. The 90-minute removal changed splacement from regular to the resource setting. This change was more troubling because of its timing after the September 2018 IEP Meeting was held. But to the extent that the service delivery in the September 2018 IEP was a separate placement, the resource placement was a less restrictive placement than in the IEP.

73. This may not have denied a FAPE for the limited period of the placement change, but it was the second of two covert changes of placement by Respondent which cannot be sanctioned. Otherwise, LEAs could make multiple incremental, unilateral changes of placement without convening IEP meetings with parental participation in direct disregard of the IDEA.
74. As indicated below, Petitioners met their burden of proof that the least restrictive environment for was the regular education setting; therefore, the Respondent's unilateral change of placement to the resource setting was not harmless error because it denied her Parents meaningful participation in the decisionmaking process.
6. Failure to Include a Required IEP Team Member at September 2018 IEP Meeting
75. An LEA must ensure that the IEP team includes an individual who can interpret the instructional implications of evaluation results who may be a regular education teacher or someone with special expertise. 34 C.F.R. § 300.321(a)(5); NC Policy 1503-4.2(a)(5).
76. Respondent failed to ensure someone capable of interpreting spychological evaluation results was present at the September 2018 IEP Meeting. The School Psychologist who conducted the evaluation did not contact the Parents before the meeting to explain the results. Although Respondent identified Ms. as the person capable of interpreting the results to the September 2018 IEP Team, the evidence proved that Ms. was not capable of interpreting the results.
77. At the October 2018 IEP Team Meeting, Respondent attempted to correct this procedural violation, but the School Psychologist left the meeting around the same time that the Parents did. Afterward, the IEP Team reconvened to revise the academic goals and draft functional goals for the October 2018 IEP.
78. There was no evidence that an alternative qualified person attended the October 2018 IEP Meeting in the Prior Written Notice or the meeting minutes or that the School Psychologist discussed the instructional implications of saverage nonverbal IQ score before she left the meeting. Respondent failed to have a qualified individual at the October 2018 IEP Meeting in violation of federal law and NC Policies.

not and did not consider the significance of the information in the evaluation as it pertained to the most appropriate placement and supplemental aids and services for Consequently,

supplemental aids and services to her. Respondent also significantly impeded the Petitioners participation at the IEP meetings by failing to have staff qualified to explain the psychological

evaluation particularly about the gap in nonverbal and verbal IQ scores.

Respondent placed

This procedural violation caused educational harm to as the IEP Teams could

in a highly restrictive setting and failed to provide appropriate

7. Continuation of October 2018 IEP Meeting Without Parents

80. A LEA must take steps to ensure that one or more of the parents of a child with a disability are present at each IEP Team meeting. 34 C.F.R. §300.322(a). Respondent did properly notify Petitioners that they intended to continue the October 2018 IEP Meeting after Petitioners left.
81. The Parents' left the meeting after Principal discriminatory statements and the meeting appeared to be terminated. Even the LEA Representative was confused about how to proceed so she contacted the EC Director at Central Office who advised her to continue the

82. When an IEP Team meeting is conducted without a parent in attendance because the LEA is unable to convince the parents that they should attend, the LEA must keep record of its attempts to include the parent. 34 C.F.R. § 300.322(d); NC Policy 1503-4.3(d).

meeting. Before this communication, the other IEP Team members did not know if the meeting

- 83. The Undersigned agrees with Respondent that parents should not be allowed to unilaterally derail IEP meetings simply because they disagree with the IEP team's decisions. Parents who know that an IEP meeting will continue if they choose to leave early, make their choice knowingly, but that was not the case here. Neither nor their advocates knew that the October IEP Meeting would be reconvened and continue in their absence. Even the schoolbased members of the IEP Team did not know if the meeting would continue until after Principal spoke with EC administrative staff.
- Respondent's decision to continue the October 2018 IEP Meeting after Petitioners left. The LEA Representative and Regular Education Teacher both testified they did not try to stop sparents from leaving and did not contact them after they left to let them know they intended to continue the meeting. *See* Tr. vol. 6, p. 1329:15-17 (Testimony of Tr. vol. 6, p. 1251:12-14 (Testimony of
- 85. Respondent proceeded with reconvening the October 2018 IEP Meeting after s Parents left without even attempting to notify them of Respondent's intention to continue the meeting in their absence. As a result, as Parents were unable to participate in the development of new goals for the determination of what supplemental aids and services would receive, the service delivery for and splacement. This procedural violation significantly impeded the Parents' meaningful participation and ultimately so right to a FAPE because the IEP team did not consider the supplemental support of a one-on-one aide which ultimately resulted in significantly impeded the parents' meaningful participation and ultimately so right to a FAPE because the IEP team did not consider the supplemental support of a one-on-one aide which ultimately resulted in significantly impeded the parents' meaningful participation and ultimately so right to a FAPE because the IEP team did not consider the supplemental support of a one-on-one aide which ultimately resulted in significantly impeded the parents' meaningful participation and ultimately so right to a FAPE because the IEP team did not consider the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately resulted in significantly in the supplemental support of a one-on-one aide which ultimately supplemental supplemental supplemental supplemental supplemental supp

8. Private Services Plan ("PSP")

was terminated.

86. Unilaterally placed private school students do not have a right to receive the same services that they would receive if enrolled in public school. 34 C.F.R. § 137(a).

- 87. The IDEA requires that "a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services." 34 C.F.R. § 300.132(b); see 34 C.F.R. § 300.138(b). A Private Service Plan ("PSP") is "a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services." 34 C.F.R. § 300.37. , including the location of the services and any transportation necessary." 34 C.F.R. § 300.37; N.C. Policies 1500-2.31. The LEA must develop, review, and revise the PSP to the same extent as an IEP. 34 C.F.R. § 300.138(b)(2)(ii). the LEA is obligated to provide transportation to and from the child's home and service site for the services it provides pursuant to the PSP. 34 C.F.R. § 300.139(b)(1); N.C. Policies 1501-6.10(b)(1).
- 88. The LEA must follow the same procedures required for the development of IEPs, including the determination of the need for ESY services. *See generally id*; 34 C.F.R. § 300.106(a)(1)-(2).
- s March 2016 IEP, which called for her to receive speech therapy as a related service, expired on March 13, 2017. Stip. 23. During the relevant time period in this case, Respondent never discussed, much less developed, a PSP for the provision of speech therapy to Therefore, a Parents continued to provide for to receive private speech therapy services even after the Parents' April 2018 request to Respondent for an IEP.
- Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes that Respondent failed to determine seligibility for a Private Services Plan and offer a Private Services Plan from November 9, 2017, through the present, though was enrolled in private schools for the 2017-2018 school year and the 2018-2019 school year, beginning in November 2018.

9. Compensatory Speech Therapy Related Services

- 91. In the alternative, an IEP should have been developed at the May 2018 IEP Meeting which would have provided with speech/language therapy as a related service. As of May 22, 2018, would have been entitled to speech language services during that period through the remainder of the 2018-2019 school year at twelve 30-minute sessions during each of the reporting periods, excluding ESY.
- 92. The private speech therapist testified that would have regressed over the summer without speech therapy during the Extended School Year ("ESY"). Respondent proffered no conflicting testimony in this regard.
- 93. As with reimbursement for the costs of Private School, a parent-plaintiff seeking compensatory services must first establish that his child was denied a FAPE. See G. ex rel R.G. v. Fort Bragg Dependent Schools, at 309; see also C.G. ex rel. A.S. v. Five Town Comm. Sch. Dist., 513 F.3d 279, 290 (1st Cir. 2008) ("compensatory education is not an automatic entitlement; rather it is a discretionary remedy for nonfeasance or misfeasance in connection with the school

system's obligations under the IDEA.").

- 94. A parent's interference with services that were or could have been provided by the district should factor into a court's determination of appropriate compensatory services. *See Parents of Student W. v. Puyallup Sch. Dist., No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994) (holding that "[t]he behavior of Student W's parents is also relevant in fashioning equitable relief," and affirming district court's decision to limit compensatory services due to parents' failure to request services when student re-enrolled in District and their decision to decline offers of summer school instruction).
- 95. If the parent succeeds in showing that his child has been denied a FAPE, then compensatory services may be appropriate. *Id.* "[C]ompensatory education involves discretionary, prospective relief crafted by a court to remedy what might be termed an educational deficit created by an educational agency's failure of a given period of time to provide a FAPE to a student." *G. ex rel R.G.*, 343 F.3d at 309.
- was entitled to 51 speech therapy sessions during the period WS/FCS failed to provide her a FAPE; therefore, excluding ESY, Petitioners are entitled to compensatory related services of 51 speech therapy sessions from May 22, 2018 to the end of the 2018-2019 school year.

SECOND ISSUE:

Whether Respondent significantly impeded some solution in the IEP process by predetermining solutions placement in the separate setting causing educational harm, and if so, what appropriate relief should this Tribunal award Petitioners?

97. The second issue concerns the IEP Teams' placement determinations during the September and October 2018 IEP Meetings. If the school-based members of the IEP Teams predetermined and splacement in the separate setting, then this would have denied Petitioners and semanting participation in the decisionmaking process for the placement determination.

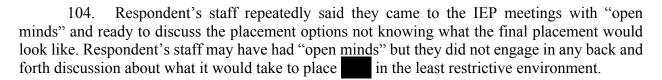
1. Predetermination of Placement Without Parental Participation

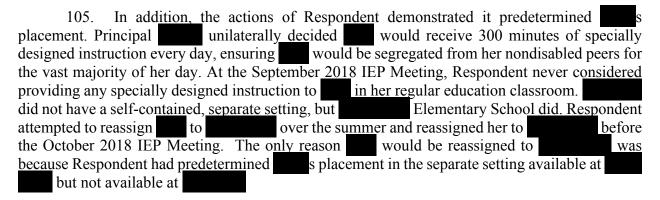
98. An IEP is "a written statement for each child with a disability that is developed, reviewed, and revised in accordance with" the IDEA. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a). The IDEA requires that parents have meaningful participation in the development of their child's IEP. 34 C.F.R. § 300.322(a); see also N.C.G.S. § 115C-109.3(a) (guaranteeing the parent the right "to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to that child.") (emphasis added).

- 99. Meaningful participation occurs where a parent has the opportunity to ask questions, express his or her opinions, and explain disagreements with components of the IEP, *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) (during the IEP process, parents and staff should have the opportunity to "fully air their respective opinions."); *N.L. ex rel. Mrs. C. v. Knox County Schools*, 315 F.3d 688, 695 (6th Cir. 2003) (rejecting predetermination claim where student's mother did not participate in pre-meeting among educational experts but had "opportunity to ask questions and voice disagreements at the *formal* IEP Team meeting") (emphasis added).
- 100. Parents are denied their right to meaningfully participate in the development of their child's IEP when a school district predetermines the child's placement prior to an IEP meeting. See, e.g., Spielberg v. Henrico Cnty. Public Sch., 853 F.3d 256 (4th Cir. 1988) (finding the school district's decision to change a student's placement before the IEP meeting violated the Education for All Handicapped Children Act, the predecessor to the IDEA); R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1188 (11th Cir. 2014) ("Predetermination occurs when a state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team.").
- 101. School district team members' preparation for an IEP meeting, or entering the meeting with opinions and recommendations, does not constitute predetermination. *Doyle v. Arlington Cnty. Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D.Va. 1992), *aff'd* 39 F.3d 1176 (4th Cir. 1994). "[S]chool officials must come to the IEP table with an open mind. But this does not mean they should come with a blank mind."). Schools should give thought to the development of a student's IEP prior to the IEP meeting. "[W]hile a school system must not finalize its placement decision before an IEP meeting, it can, and should, have given some thought to that placement." *Doyle* 806 F.Supp. at 1262.
- open mind and might possibly be swayed by the parents' opinions and support for the IEP provisions they believe are necessary for their child." *R.L.*, 757 F.3d at 1188 (citing *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004)). When the school district "presents one placement option at the meeting and is unwilling to consider alternatives," its actions violate the IDEA. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 F. App'x 342 (9th Cir. 2007); *see also R.L.*, 757 F.3d at 1188–90 (finding the school board predetermined the student's placement where it was "clear that 'there was no way that anything [the student's parents] said, or any data [they] produced, could have changed the [Board's] determination of 'the appropriate placement").
- 103. Courts that have found predetermination have done so where there is evidence supporting an inference that the school district determined the student's educational path in advance and did not allow for consideration of alternatives. For instance, in *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840 (6th Cir. 2004), the court found predetermination where the school district had an unofficial policy of refusing certain types of programs, refused to consider the parents' request for certain programs (in part by prohibiting the parents from asking questions during an IEP meeting), and made its determination based on primarily financial considerations rather than the child's unique needs. In *Spielberg ex rel. Spielberg v. Henrico Cty. Pub. Schs.*, 853 F.2d 256 (4th Cir. 1988), the school district wrote letters stating its intent to change a student's

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placement before developing an IEP. The court found that the district "resolved to educate [the child] at [one school], *and then* developed an IEP to carry out their decision." *Id.* at 259 (emphasis added). *See also J.G. ex rel. N.G. v. Kiryas Joel Union Free Sch. Dist.*, 777 F.Supp.2d 606, 649 (S.D.N.Y. 2011) (collecting cases).





106. Petitioners have proved by a preponderance of the evidence that the school-based members of the IEP Teams did not come to the September 2018 IEP Meeting or the October 2018 IEP Meeting with open minds, and based on the findings of fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes that Respondent predetermined s placement in the separate setting, significantly impeded s Parents' meaningful participation in the IEP decisionmaking process and resulted in a denial of FAPE to in the least restrictive environment.

2. The Separate Setting Was Not the Least Restrictive Environment for

107. The IEP is the "centerpiece" of delivering FAPE for disabled students; it must set out relevant information about the child's present educational performance and needs, establish annual and short-term objectives for improvements in that performance, and describe the specially designed instruction and services to meet the unique needs of the child. *Honig v. Doe*, 484 U.S. 305, 311 (1988) (quoting 20 U.S.C. §§ 1401, 1414(d)).

- 108. Specifically, the IEP Team must consider "the strengths of the child; the concerns of the parent[] for enhancing the education of [her] child; the results of the . . . most recent evaluation of the child; and the academic developmental, and functional needs of the child." 20 U.S.C. 1414(d)(3)(A). "The adequacy of a given IEP turns on the unique circumstance of the child for whom it was created." *Endrew F.*, 137 S.Ct. at 1001.
- 109. In *Endrew F*., the Supreme Court held that while the students protected under the IDEA may have a broad range of disabilities affecting each child's ability to access the general curriculum, the "substantive obligation" of the school district is the same for all students: "a school

must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S.Ct. at 999; *see also v. Antelope Valley*, 858 F.3d 1189, 1200 (9th Cir. 2017) (finding in *Endrew F.*, the Supreme Court "provided a more precise standard for evaluating whether a school district has complied substantively with the IDEA").

110. The IDEA clearly articulates a presumption that disabled children will not be segregated from their nondisabled peers and will be educated in the least restrictive environment ("LRE"):

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(5)(A); see 34 C.F.R. § 300.114(a).

111. The IDEA prefers full integration in the regular classroom, *Endrew F.*, 137 S.Ct. at 999, and emphasizes the integral role of supplemental aids and services to allow disabled students to access the regular classroom, 34 CFR § 300.114(a)(2)(ii). Before denying a child access to a general education classroom, the IDEA requires the LEA to meaningfully consider the provision of appropriate supplementary aids and services needed for a disabled child to participate in the least restrictive environment. 34 C.F.R. § 300.117.

3. Fourth Circuit's Three Pronged Test for the Least Restrictive Environment ("LRE")

- 112. The Fourth Circuit in *DeVries ex rel DeBlaay v. Fairfax County School Board* emphasized that the mainstreaming of children with disabilities is "not only a laudable goal but is also a requirement of the Act" and adopted the *Roncker* standard. *DeVries*, 882 F.2d. 876, 879 (4th Cir. 1989) (citing *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir. 1983) (requiring a court to "determine whether the services which make that placement [at a segregated facility] superior could be feasibly provided in a non-segregated setting")).
- 113. Mainstreaming is not appropriate for every child. *DeVries*, 882 F. 2d at 878. The proper inquiry is whether a proposed placement is appropriate is whether the child's placement is the setting where the child learns. *Id.*; R.F., 919 F.3d at 246.
- 114. When adopting the *Roncker* standard, the *DeVries* Court, identified three factors that could defeat the presumption of a general education classroom placement: (1) the disabled child would not benefit from mainstreaming; (2) any marginal benefits received from mainstreaming are far outweighed by the benefits gained from services that could not be feasibly provided in the non-segregated setting; or (3) the disabled child is a disruptive force in the non-segregated setting. *DeVries*, 882 F.2d at 876; *see also Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036,

1048 (5th Cir. 1989) (incorporating a modification of the *Roncker* standard). The child "need not master the general-education curriculum for mainstreaming to remain a viable option"; "[r]ather, the appropriate yardstick is whether the child, with appropriate supplemental aids and services, can make progress toward the IEP's goals in the regular education setting." *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779, 793 (6th Cir. 2018).

- 115. The LRE requirement "is defined in terms of the extent to which children with disabilities are educated with children who are *not* disabled." *R.F.*, 919 F.3d at 247 (citing *DeVries* at 878)(emphasis in original). The IDEA's presumption of inclusion can only be overcome, and a more restrictive placement considered if the district presents *evidence* that the student made no academic progress and received *no benefit* from the inclusive placement with his nondisabled peers—despite the district's *substantial efforts* to educate the child in an inclusive setting. *See e.g.*, *Hartmann v. Loudoun Cnty. Bd. of Educ.*, 118 F.3d 996, 999-1000 (4th Cir. 1997)(emphasis added).
- 116. Respondent admitted that it could have educated in her regular education classroom with supplemental aids and supports if she had not exhibited behavioral problems.
- 117. In *Hartmann*, the Fourth Circuit analyzed Loudon County Schools' documented efforts to include Mark, a child with severe behavioral problems, in the general education classroom. *Hartmann*, 118 F.3d at 999-1000. This analysis was essential to the Court's ultimate holding to support the district's decision to remove Mark from his non-disabled peers for academic instruction and only allow him access to his non-disabled peers during lunch, recess, and specials. *Id.* at 1003.
- 118. Specifically, the Court noted the willingness and enthusiasm of Mark's teachers and the staff to include him in the general education classroom, which was "fully supported by the record." *Id.* at 1005. In addition to the district's attitude towards including Mark, the district provided the Court with "cogent and responsive evidence" of the sincere efforts it made to overcome the IDEA's presumption of inclusion.
- 119. The district's documented efforts in *Hartmann* were substantial as they: (1) carefully selected Mark's teacher; (2) hired a full-time aide to assist Mark throughout the day; (3) put Mark in a smaller class with more independent children; (4) Mark's teacher read extensively about autism; (5) both Mark's teacher and full-time aide received training in facilitated communication, a special communication technique; (6) the district provided Mark with five hours per week of speech and language therapy with a qualified specialist; (7) a special education teacher was assigned to provide Mark with three hours of instruction a week and to advise Mark's teacher and aide; (8) the Loudoun County Director of Special Education, personally worked with Mark's IEP team; (9) the district provided in-service training on autism and inclusion of disabled children in the regular classroom; (10) Mark's teacher, full-time aide, and other members of the IEP Team, attended a seminar on inclusion held by the Virginia Council for Administrators of Special Education; (11) Mark's IEP team also received assistance from outside educational consultants; (12) Mark's teacher conferred with additional specialists whose names were provided to her by the Hartmanns and the school; (13) Mark's curriculum was continually modified to ensure that it was properly adapted to his needs and abilities; and (14) Mark's teacher met constantly with Mark's

aide, his speech therapist, the IEP team, and others to work on Mark's program--daily at the beginning of the year and at least twice a week throughout. *Id.* at 999–1000, 1005.

- 120. The Fourth Circuit deemed Mark's severe behavior issues—and the documented significant, but unsuccessful efforts, made by the school district to address them—noteworthy when deciding to uphold the district's decision to place Mark in a segregated setting. *Id.* at 1004.
- 121. Unlike the school in *Hartmann*, Respondent's staff made some attempts but not meaningful effort to support in the regular setting. Respondent never offered to provide with a one-on-one aide and refused to provide one when as Parents requested one. No evidence was presented that Respondent provided in-service training to a steachers on how to include students with a students with any meaningful supplemental aids and services in her regular education classroom. To the contrary, Respondent began removing from her nondisabled peers for part of the day before her IEP was even developed and scheduled to go into effect.
- 122. Other school programs have been able to successfully integrate in the regular classroom. Before senrollment in WS/FCS, her private preschool was able with minimal accommodations to educate with her nondisabled peers. After her enrollment, was also successful in educating in the least restrictive environment with her nondisabled peers.
- After s attendance at the staff made similar efforts as the was successful. At (1) the teachers school in *Hartmann*, but unlike that school, s Parents before school started; (2) the school hired a one-on-one aide; (3) conferred with started on a modified day, then went full day; (4) the teacher researched scholarly articles (5) the school purchased a 50-page educator about how to teach a student with manual for Supporting the Student \overline{With} in Your Classroom (Pet. Ex. 40); (6) the teachers collaborated daily; (7) the teachers modified and differentiated s classwork; (8) behavioral strategies were used, such as visual cues, positive reinforcement, sticker chart, and social stories; (9) assistive technology was provided (spring loaded scissors and back support chair); and, (10) appropriate behavior data was kept on the functions of than just the frequency of them.
- 124. When considering a child's placement, "the school 'must consider the whole range of supplemental aids and services, including resource rooms and itinerant instruction,' speech and language therapy, special education training for the regular teacher, behavior modification programs, or any other available aids or services appropriate to the child's particular disabilities. The school must also make efforts to modify the regular education program to accommodate a disabled child." *Oberti v. Bd. of Educ. of Borough of Clementon Sch. Dist.*, 995 F.2d 1204, 1216 (3d Cir. 1993) (citations omitted) (quoting *Greer v. Rome City Sch. Dist.*, 950 F.2d 688, 696 (11th Cir. 1991)).
- 125. Respondent did not give any meaningful consideration as to how to accommodate in her regular education setting. When Petitioners requested an FBA, the school-based members of the team agreed that it was necessary but told Petitioners they needed to finalize

placement first. When Petitioners requested a one-on-one aide, Respondent denied this request outright, by misrepresenting the requirements for a one-on-one aide and explaining to Petitioners that the WS/FCS simply did not have the resources.

- 126. There was extensive testimony documenting the myriad of ways that Respondent could have attempted to support and serve in the regular education classroom prior to removing her to a segregated setting. However, the Undersigned finds any of the attempts Respondent reportedly made were half-hearted at best, as Respondent had already predetermined that would be best served in a segregated setting in the Readiness program.
- 127. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes that Petitioner has met their burden of proof by a preponderance of the evidence that Respondent substantively denied a FAPE and significantly impeded her Parents' meaningful participation in the decision making by predetermining splacement in the separate setting and by not considering appropriate supplemental aids and accommodations which would have allowed her to be educated in the least restrictive environment.

Appropriateness of Private School Placement

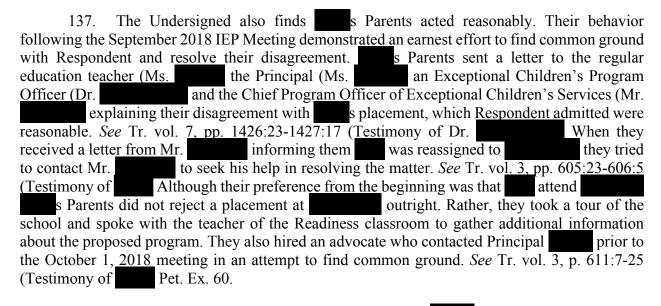
- 128. Petitioners are entitled to reimbursement for their private program only if they are able to show both that the public school system's program denied a FAPE and that the private program they chose was appropriate. School Co. of the Town of Burlington, Mass. v. Dep't of Educ. of the Commonwealth of Mass., 471 U.S. 359, 370 (1985).
- 129. Although a private school's program is not scrutinized under the statutory requirements of FAPE, parents seeking reimbursement still must show that the private program provided an education otherwise proper under the IDEA. *Florence Cty. Sch. Dist. Four v. Carter by and through Carter*, 510 U.S. 7, 12-13 (1993). A private program is proper under the IDEA where it is "reasonably calculated to enable the child to receive educational benefits." *M.S. ex rel. Simchick v. Fairfax Cty. Sch. Bd.*, 553 F. 3d 315, 324 (4th Cir. 2009).
- 130. Several factors bear on a court's determination as to appropriateness of a private placement under the IDEA, including whether the student progressed behaviorally and/or educationally in the private program. *Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH*, 642 F.3d 478, 488 (4th Cir. 2011) (private placement deemed appropriate under IDEA where autistic student progressed educationally and behaviorally, was learning more, and was no longer engaging in problematic self-stimulating behaviors that occurred in public school).
- 131. A private school is not judged by, nor must it attain, state education standards in order to be deemed appropriate. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 7 (1993). For example, a private placement need not provide certified special education teachers or an IEP for the disabled student. *R.E. v. N.Y. City Dep't of Educ.*, 785 F. Supp. 2d 28, 44 (S.D.N.Y. 2011); *see also Jennifer D. as Parent of Travis D. v. N.Y.C. Dep't of Educ.*, 550 F. Supp. 2d 420 (S.D.N.Y. 2008) (holding that parents presented sufficient evidence of appropriateness of the private placement when several witnesses, including a professional working with the student, explained

why the program met the student's educational needs). A parent's placement is deemed appropriate when it meets the standard of being "reasonably calculated to enable [the student] to receive educational benefits." *Frank G. v. Bd. of Educ. of Hyde Park*, 459 F.3d 356, 364 (2nd Cir. 2006)(finding "no one factor is necessarily dispositive" and courts should take a totality of the circumstances approach when assessing appropriateness).

- 132. Petitioners are not barred from reimbursement when the private school they choose does not meet the IDEA definition of a FAPE. *See* 20 U.S.C. § 1401(9). When an LEA fails to offer a FAPE and parents choose to unilaterally place their child in a private school, parents must seek appropriateness and not perfection.
- 133. The Parents' private school placement at was not perfect in that educated with younger peers, but it was appropriate and allowed to be educated in the least restrictive environment with, most importantly, nondisabled students.
- 134. The Undersigned finds is reasonably calculated to enable educational benefits and she has progressed academically and especially behaviorally while at At the time of the hearing, had made academic and behavioral progress in her time at Although she struggled with these skills when she first started at is now able to participate in small group activities with minimal redirection, transition between activities with few visual cues, sit indefinitely during circle time, stay focused during large group activities, and politely ask for help when she needs it.

Consideration of Equities

- 135. The IDEA provides various scenarios where a reimbursement claim may be reduced or denied. 34 C.F.R. § 300.148(d). First, "[a]t the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense." 34 C.F.R. § 300.148(d)(1)(i). Second, "[a]t least ten (10) business days . . . prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph d(1)(i) of this section." 34 C.F.R. § 300.148(d)(1)(ii). Third, where, "prior to the parents' removal of the child from the public school, the public agency informed the parents . . . of its intent to evaluate the child . . . , but the parents did not make the child available for the evaluation." 34 C.F.R. § 148(d)(2). Finally, a reimbursement claim may be reduced or denied "[u]pon a judicial finding of unreasonableness with respect to actions taken by the parents." 34 C.F.R. § 148(d)(3). The IDEA further provides that tuition reimbursement "must not be reduced or denied for failure to provide the notice if . . . [t]he school prevented the parents from providing the notice." 34 C.F.R. § 300.148(d)(1).
- 136. Here, the Undersigned finds some Parents gave proper notice to Respondent based on the documentary and testamentary evidence presented during the hearing. Respondent did not challenge that Petitioners satisfied the notice requirement prior to placing at



- 138. After the inflammatory comments of Principal at the October 2018 IEP Meeting, Petitioners' actions were understandable. As a general rule parents should not terminate an IEP meeting simply due to disagreements with other IEP team members. However, based on the specific facts in this case, the Undersigned concludes that
- 139. Respondent argued that Parents unreasonably insisted that be mainstreamed 100 % with her non-disabled peers and would not consider any pull-out special education services. At that time, Petitioners' desire for 100% inclusion in a kindergarten class was reasonable as evidenced by success with 100% inclusion at the private schools. Whether 100% inclusion remains reasonable as progresses from grade to grade has yet to be determined.
- 140. In balancing the equities, Respondent's behaviors, including the misrepresentations made to the Parents by Principal failing to even consider a one-on-one aide as a supplemental support, failing to disclose to Petitioners the Behavior Data Sheets, and unwillingness throughout the case to consider a lesser restrictive placement, were unreasonable.

Matters Not Before This Tribunal

141. The above-described issues are the only issues before the Undersigned in this contested case and any others that were not specifically and properly pled in the Petition are not before the Undersigned in this case and will have no part in this Final Decision.

Remedies

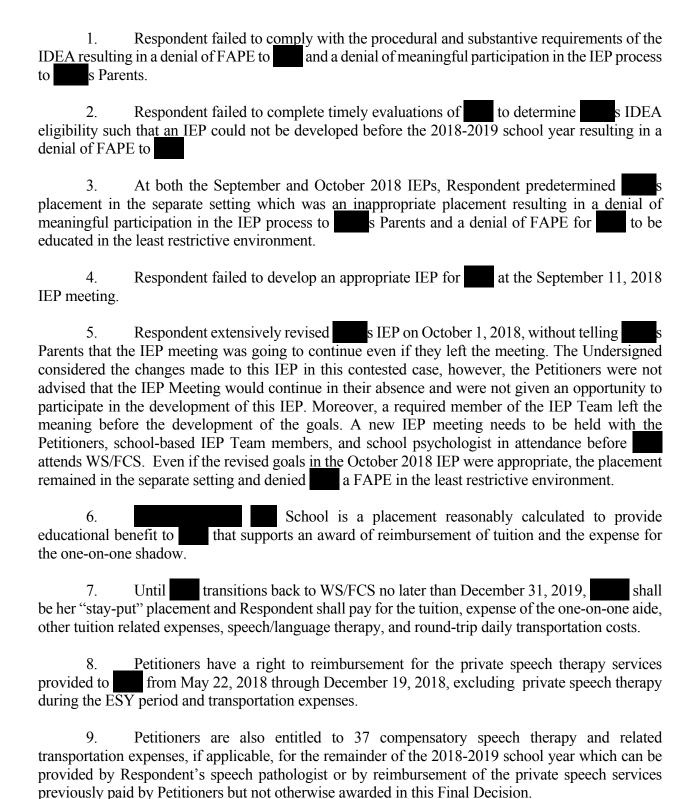
- 142. The IDEA confers "broad discretion' on the court when fashioning an appropriate remedy." *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 325 (4th Cir. 2009) (quoting *Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1996)).
- 143. "Courts fashioning discretionary equitable relief under the IDEA must consider all relevant factors" *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 16 (1993).

- 144. The reimbursement provision of the IDEA prescribes that a school district may be required to fund retroactive direct tuition to a private-school obtained by parents for their child if: (1) the district failed to offer a FAPE; and (2) the program obtained by the parent was appropriate. 20 U.S.C. § 1412(a)(10)(C); *Burlington*, 471 U.S. at 374. When an LEA fails to offer a FAPE and parents choose to unilaterally place their child in a private school, parents must seek appropriateness and not perfection. *R.E. v. N.Y.C. Dept. of Educ.*, 785 F. Supp. 2d 28, 44 (S.D.N.Y. 2011), *aff'd*, 694 F.3d 167 (2d Cir. 2012).
- 145. Based on the Findings of Fact, stipulations, sworn testimony, and other evidence in the record, the Undersigned concludes School is an appropriate placement for and the equities favor the reimbursement of tuition, expenses for the one-on-one shadow, and related tuition costs Petitioners incurred for to attend during the 2018-2019 school year. As Respondent objected to transportation reimbursement and Petitioners appeared to have abandoned this claim during their case in chief, transportation costs for the 2018-2019 school are not reimbursable.
- 146. The Undersigned further orders that be placed at until Respondent is able to complete the training ordered below and hire the appropriate staff to implement the remedy outlined below when so returns to receive instruction in the Winston-Salem/Forsyth County Schools. Respondent is to pay for tuition, one-on-one shadow expenses, and related expenses as well as Petitioners' transportation costs as incurred while is the stay-put placement. While remains at Respondent shall pay for twelve 30-minute speech language therapy sessions for the equivalent of each a nine-week reporting period during the 2019-2020 school year she remains at
- 147. The Undersigned further orders reimbursement in the amount of \$980.00 (14 sessions) to the Petitioners for the expense of private speech therapy services provided by the Parent's private speech pathologist from May 22, 2018 through the end of the 2017-2018 school year, excluding ESY, and for private speech services rendered during the 2018-2019 school year from August 29, 2018 to December 19, 2018. Because Respondent objected and Petitioners abandoned transportation reimbursement for the private speech therapy sessions, transportation expenses are not reimbursable for this period.
- 148. Petitioners are also entitled to compensatory speech therapy related services for the remainder of the 2018-2019 school year in the amount of 37 sessions. Respondent may elect to provide these services or reimburse Petitioners for 37 private speech therapy sessions in the amount of \$2,590.00. See FoF ¶ 384.

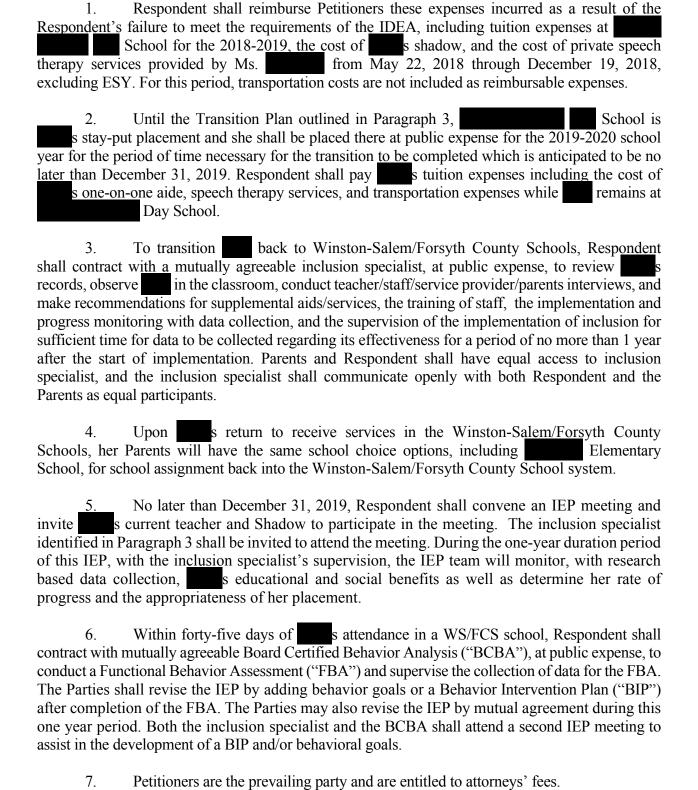
BASED ON THE FOREGOING, the Undersigned hereby finds proper authoritative support of the Conclusions of Law noted above, and the Undersigned hereby **ORDERS**:

FINAL DECISION

BASED upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioners met their burden of proof, by a preponderance of the evidence showing:



IT IS HEREBY ORDERED THAT:



NOTICE OF APPEAL RIGHTS

In accordance with the Individuals with Disabilities Education Act and North Carolina's Education of Children with Disabilities laws, the parties have appeal rights regarding this Final Decision.

Under North Carolina's Education of Children with Disabilities laws (N.C.G.S. §§ 115C-106.1 et seq.) and particularly N.C.G.S. §§ 115C-109.9, "any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 115C-107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section."

Inquiries regarding further notices, timelines, and other particulars should be directed to the Exceptional Children Division of the North Carolina Department of Public Instruction, Raleigh, North Carolina prior to the required close of the appeal filing period.

IT IS SO ORDERED.

This the 23rd day of August, 2019.

Stacey Bice Bawtinhimer Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Teresa Silver King NC Department of Public Instruction due_process@dpi.nc.gov Affiliated Agency

Stacey M Gahagan Gahagan Paradis, PLLC sgahagan@ncgplaw.com Andrew Corey Frost cfrost@ncgplaw.com Attorney for Petitioner

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This the 23rd day of August, 2019.

Anita M Wright

Paralegal

Office of Administrative Hearings

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Auch M. Fright

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